

PERMANENT RECORDS

APPENDIX

RE-1

IN THE
UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28254

E. I. duPONT deNEMOURS & COMPANY, INC.,

Plaintiff-Appellee,

versus

ROLFE CHRISTOPER, ET AL,

Defendants-Appellants.

U. S. COURT OF APPEALS
FILED

SEP 25 1969

EDWARD W. WADSWORTH
CLERK

Appeal from the United States District Court
for the Eastern District of Texas.

C-17-018-73

TITLE OF CASE

ATTORNEYS

For plaintiff: Robert Q. Keith
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701

VS

CHRISTOPHER and
CHRISTOPHER

A TRUE COPY I CERTIFY
JAMES R. COONEY, CLERK
U. S. DISTRICT COURT
EASTERN DISTRICT, TEXAS

BY Mildred C. Verrill
DEPUTY

For defendant: David J. Kreager
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

damages sustained as result
illegal photographing of
main installations, for injunc-
against distributing said
ographs or negatives, and
atory injunction regarding
very of negatives and prints
laintiff, etc. Title 28,
1332.

| RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|--------|--------------|--|--------------|------------------------|-------|-------|
| 28-69 | Clerk | | 1969 3-28 | Robt.Q. Keith | 15.00 | |
| | | | 4.2 | C.P. 200 / 42 | | 15 |
| | Marshal | | | | | |
| | Docket fee | | | | | |
| | Witness fees | | | | | |
| | Depositions | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

| PROCEEDINGS | Date Order Judgment Made |
|---|-----------------------------|
| Filed Plaintiff's Original Petition, and issued Summonses. Sent to U. S. Marshal, Tyler, Texas, for service. | |
| Filed Marshal's Return showing service of summons on Rolfe Christopher through his wife, Virginia Christopher, on April 3, 1969. | \$4.2 |
| Filed Marshal's Return showing service of summons on Gary Christopher personally on April 3, 1969. | \$3.0 |
| Filed Motion for Leave to Take Oral Depositions of Defendants within less than 20 days after commencement of this action. | |
| ORDER, signed by Judge Fisher and filed, grants leave to plaintiff to take oral depositions of defendants on April 14, 1969, and to issue such notices as required. | V. 3 P. 3 |
| Filed Notice to Take Depositions. | |
| Filed Defendants' Motion to Dismiss for Lack of Jurisdiction. | |
| Filed Motion to Postpone Taking of Deposition of Defendants. | |
| ORDER, signed by Judge Fisher and filed, sets hearing on Monday, April 14, 1969, at 10:00 A.M., to consider Defendants' Motion to Dismiss for Lack of Jurisdiction and Motion to Postpone | V. 3 P. 3 |
| Taking of Deposition of Defendants in the above action. Further orders that depositions of defendants be postponed pending this hearing. | |
| Approved RESTRAINING ORDER signed by Judge Fisher and filed, enjoining Defendants from taking any further photographs of Dupont's Beaumont Works without consent of Plaintiff; that Defendants are restrained from circulating or publishing said photographs; and that Defendants shall serve upon persons who engaged them to take photographs, a copy of this Order of RESTRAINT, and make return to this Court, under oath, that each person has been served and upon counsel for Plaintiff | V. 34- P. 59 |
| Notice mailed to counsel | |
| Filed Plaintiff's Motion to Compel Answer. | |
| Filed DEPOSITION of ROLFE CHRISTOPHER. | \$102. |
| Filed DEPOSITION of GARY WESLEY CHRISTOPHER. | \$62. |
| Filed DEPOSITION of CLIFTON WAYNE GREGORY. | \$37. |
| Filed Defendants' MOTION for SUMMARY JUDGMENT. | |
| Filed Plaintiff's CONTROVERTING AFFIDAVIT signed by Frank Maderick, Technical Superintendent of Dupont, in opposition to Defendants' Motion for Summary Judgment | |
| Filed Defendants' MOTION FOR INTERLOCUTORY APPEAL | |
| ORDER signed by Judge Fisher and filed, setting out as follows: | |
| (1) OVERRULING Defendants' Motion to Dismiss for Lack of Jurisdiction; | |
| (2) OVERRULING Defendants' Motion to Dismiss for failure to state claim upon which relief can be granted; | |
| (3) OVERRULING Defendants' Motion for Summary Judgment; | |
| (4) SUSTAINING Plaintiff's Motion to compel answer to questions on depositions relating to identity & location of firm or person who employed Defendants to take photographs; and | |
| (5) GRANTING Defendants' Motion for leave to file Application for Appeal to Court of Appeals, and proceedings in this Court stayed until termination of Appeal. | V. 35- P. 11 |
| Notice mailed to counsel | |
| MEMORANDUM signed by Judge Fisher and filed. Certified copies furnished attorneys of record. | V. 35 P. 10 |
| Filed REPLY of Defendants-Appellants to Plaintiff's Answer to Petition for Interlocutory Appeal (1 copy only received) | |
| Filed Certified Copy of Order received from U.S. Court of Appeals, Fifth Circuit, granting Defendants, Rolfe Christopher, et al., leave to appeal | V. 36 |

Rev. Civil Docket Continuation

PROCEEDINGS

- 9 Filed Letter from Appellants stating that entire record be transmitted to U.S. Court of Appeals, Fifth Circuit, as record on Appeal
- 9 Filed Appellants' Cost Bond on Appeal in sum of \$250.00
- 69 Filed Application for Leave to Take Interlocutory Appeal to U.S. Court of Appeals, Fifth Circuit, by Defendants-Appellants

I N D E X

| | <u>PAGE NO.</u> |
|---|-----------------|
| Plaintiff's Original Petition----- | 1 |
| Motion and Order to take Oral Depositions of Defendants----- | 9 |
| Defendants' Motion to Dismiss for Lack of Jurisdiction, with Exhibits A and B Attached----- | 11 |
| Note as to Omissions in Record----- | 17 |
| Restraining Order----- | 17 |
| Motion to Compel Answer----- | 19 |
| Note as to Omission in Record----- | 21 |
| Portions of Deposition of Rolfe Christopher----- | 21 |
| Portions of Deposition of Gary Wesley Christopher- | 119 |
| Portions of Deposition of Clifton Wayne Gregory--- | 178 |
| Defendants' Motion for Summary Judgment with Exhibits A and B Attached----- | 213 |
| Controverting Affidavit----- | 219 |
| Note as to Omission in Record----- | 223 |
| Order Overruling Defendants' Motion to Dismiss for Lack of Jurisdiction; Overruling Defendants' Motion to Dismiss for Failure to State Claim upon Which Relief can be Granted; Overruling Defen- dants' Motion for Summary Judgment; Sustaining Plaintiff's Motion to Compel Answer; and Granting Defendants' Motion for Leave to File Application for Appeal----- | 224 |
| Memorandum----- | 226 |
| Note as to Omissions in Record----- | 228 |
| Cost Bond on Appeal----- | 229 |
| Clerk's Certificate----- | 231 |
| Note as to Omission in Record----- | 232 |

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

E. I. duPONT deNEMOURS &
COMPANY, INC.

VS.

CIVIL ACTION NO. 6258

ROLFE CHRISTOPHER and
GARY CHRISTOPHER

(Filed: March 28, 1969)

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW E. I. duPont deNemours & Company, Inc., hereinafter called DuPont, complaining of Rolfe Christopher and Gary Christopher, and for cause of action would show unto the Court:

I.

Plaintiff is a corporation organized and existing under the laws of the State of Delaware and has its principal office and place of business at Wilmington, in the State of Delaware.

Defendants, Rolfe Christopher and Gary Christopher are residents and citizens of the City of Beaumont, Jefferson County in the State of Texas, and within the jurisdiction of this Court.

II.

The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand (\$10,000.00)

Dollars. The Court has jurisdiction of this case under Title 28, USC, §1332.

III.

The defendants are engaged in the business of commercial photography with studios in Beaumont, Jefferson County, Texas.

IV.

Plaintiff is engaged in the business of developing, manufacturing and marketing a large variety of products made from various chemicals which are widely used for commercial, industrial and domestic uses throughout the United States and the known world. In connection with its business plaintiff owns and operates plants, factories or works at various places throughout the United States.

On the 19th day of March, 1969, plaintiff was the owner in fee simple of a tract of land in Jefferson County, Texas. Plaintiff had theretofore constructed upon said tract and was then engaged in operating thereon a large chemical plant consisting of many buildings, tanks and other structures, including intricate vessels, pipes and other apparatus necessary in its said chemical manufacturing business; such plant is known by plaintiff at its Beaumont Works.

At all times material hereto, plaintiff was

constructing an addition to its Beaumont Works, for the manufacture of "Methanol".

Plaintiff avers that its processes of manufacturing "Methanol" are highly secret and were developed by it only after extensive research extending over a period of many years and at a cost to plaintiff of many millions of dollars, which development and research is continuing; that in the course of the development of processes and means of manufacturing "Methanol" plaintiff has acquired certain know-how and now possesses certain trade secrets other than processes heretofore patented which have enabled it to obtain a competitive advantage over competitors in said chemical industry who do not know of or use such trade secrets and which trade secrets and know-how, particularly with respect to "Methanol", are the exclusive property of plaintiff, which it is entitled to use for its own benefit or the benefit of such other persons, firms and corporations as it may lawfully authorize to manufacture said products, and as such plaintiff's know-how and trade secrets are a species of property and property rights entitled to protection against appropriation by any unlawful means and unauthorized disclosure to and use by other persons, firms or corporations without the consent or permission of plaintiff; that plaintiff has taken every reasonable precaution

at its said Beaumont Works and elsewhere to preserve the secrecy of its said processes of manufacturing its said products, including, among other precautions, the fencing of its said plant, the prohibition of photographs by even its own employees except by special permission of management, the prohibition of visitors and the requirement that even its employees agree in writing not to disclose such trade secrets.

V.

Plaintiff avers that on the 19th day of March, 1969, the defendants without the consent, permission or knowledge of the plaintiff or of any of its officers, agents, servants or employees, by means of an airplane chartered by them at the instance of a person or persons unknown to plaintiff while flying at a low level altitude, did unlawfully and surreptitiously take an unknown number of aerial photographs of plaintiff's Beaumont Works and particularly that portion thereof wherein installations for the processes of manufacturing "Methanol" were then and there being constructed; that photographs of certain parts of the installations and structures used in the process of manufacturing either or both of said products could, by study at the hands of expert engineers and chemists, result in the disclosure of plaintiff's know-how and trade secrets not now known to plaintiff's competitors

and not discoverable from a study of existing patents in the successful manufacture of either or both of said products.

VI.

Plaintiff is informed, advised and believes and so avers that the said defendants in so taking said photographs were acting as the agent, servant and employee of persons who had no lawful right to said photographs or to the know-how and trade secrets of plaintiff which could be gained by a study of said photographs and who were desirous of obtaining unlawfully, improperly and surreptitiously the trade secrets and know-how of the plaintiff in manufacturing said "Methanol" for the purpose of impairing or destroying plaintiff's competitive advantage in the manufacture and distribution of "Methanol"; that the taking of said photographs and the distribution and circulation of said photographs by said defendants to persons other than the plaintiff, its authorized officers, agents and employees, is not only unlawful but that plaintiff is without remedy for redress of the wrongful invasion of its property and property rights unless the equitable relief hereinafter prayed be granted.

VII.

Plaintiff avers that notwithstanding a proper and lawful demand made by plaintiff's duly authorized

representatives the defendants have declined and refused to disclose to plaintiff the identity of the person or persons or firms or corporations who employed them to take said photographs and likewise declined and refused to show or exhibit to plaintiff's duly authorized representatives either the negatives of said photographs or any prints thereof, and still continues so to do, unless plaintiff agreed or agrees not to inquire into defendants' principal or their relationship to said principal.

VIII.

Plaintiff avers that it has already suffered substantial damage, loss and injury by reason of said unauthorized photographs; that it is imperative that the further circulation and distribution of said photographs be stopped at once; that the identity of the person or persons who employed the said defendants be made known to plaintiff immediately; that unless such further circulation be stopped and such identity be immediately disclosed plaintiff's competitive advantage in the manufacture and distribution of "Methanol" will be seriously impaired if not completely destroyed and plaintiff will therefore suffer irreparable loss, injury and damage without having any adequate legal remedy to redress or even minimize the same.

WHEREFORE, plaintiff demands judgment:

(1) That plaintiff may have judgment against the defendants for all damages ascertained to have been sustained by it as result of the aforesaid illegal conduct of the said defendants;

(2) That the defendants be temporarily restrained and permanently enjoined from taking any further photographs of the plaintiff's said plant without the permission and consent of the plaintiff by its duly authorized officers and agents;

(3) That the defendants be temporarily restrained and permanently enjoined from further circulating or distributing any photographs taken by them of said plant on March 19, 1969.

(4) That the defendants be temporarily restrained and permanently enjoined from delivering the negatives of the photographs taken by them of the plaintiff's said plant on March 19, 1969, to any person, firm or corporation other than plaintiff;

(5) That the defendants be mandatorily enjoined and directed to deliver to duly authorized representatives of the plaintiff all negatives of photographs taken by him of said plant on March 19, 1969, and all prints in his possession made from said negatives;

(6) That plaintiff be granted leave to forthwith take the deposition of the defendants pursuant to Rule 26

of the Federal Rules of Civil Procedure for United States District Courts;

(7) That plaintiff may recover of and from said defendant its reasonable costs and expenses incurred in this behalf.

(8) That plaintiff may have such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ Robert Q. Keith
Attorney for Plaintiff

Of Counsel:

William Kirk
Legal Department
E. I. DuPont deNemours & Company, Inc.
Wilmington, Delaware

MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas

UNITED STATES OF AMERICA
EASTERN DISTRICT OF TEXAS
COUNTY OF JEFFERSON
STATE OF TEXAS

ROBERT Q. KEITH, being first duly sworn, deposes and says: That he is the attorney for the plaintiff in the annexed Petition; that he has read the said Petition and believes the same to be true; that the plaintiff is a corporation and its officers are absent from and are non-residents of the State of Texas, and that affiant makes this affidavit for the reason that said officers of plaintiff

are absent from and non-residents of said State and the County and District in which this suit is brought.

/s/ Robert Q. Keith
ROBERT Q. KEITH

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, this 28th day of March, 1969.

/s/ Dixie Anne Hardcastle
Notary Public in and for
Jefferson County, Texas

[S E A L]

..oo00oo..

MOTION AND ORDER TO TAKE ORAL
DEPOSITIONS OF DEFENDANTS

(Number and Title Omitted) (Filed: April 9, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW plaintiff in the cause above captioned, E. I. duPont deNemours & Company, Inc., by its attorney, and moves the Court as follows: for an order, pursuant to Rule 26 of the Federal Rules of Civil Procedure granting plaintiff leave to take the oral depositions of defendants, Rolfe Christopher and Gary Christopher upon Monday, April 14, 1969, within less than 20 days after the commencement of this cause for in the interest of justice plaintiff would show that injunctive relief is sought and it is necessary to take depositions so that an early hearing before this Court may be properly predicated; and because the matters to be inquired into upon deposition are within

the personal knowledge of defendants and not within the knowledge of your plaintiff, its agents, servants, attorney or employees and can be gained from no other source than defendants. In further support thereof, plaintiff would show that it has exercised every effort to obtain the information from sources other than defendants, and has been unable so to do, and thus the depositions, which must be taken at the earliest possible time, afford the sole opportunity to your plaintiff to obtain the information necessary to predicate its action for injunctive relief.

Respectfully submitted,

MEHAFFY, WEBER, KEITH &
GONSOULIN
Attorneys for Plaintiff

By /s/ Robert Q. Keith
Of Counsel

1400 San Jacinto Building
Beaumont, Texas

O R D E R

The foregoing Motion is granted and leave is granted to the plaintiff to take the oral depositions of defendants Rolfe Christopher and Gary Christopher upon April 14, 1969 and to issue such notices as are otherwise required under the Federal Rules of Civil Procedure.

DONE and ORDERED in Chambers on this the 9th day

of April, 1969.

/s/ Joe J. Fisher
Judge Presiding

..oo00oo..

DEFENDANTS' MOTION TO DISMISS
FOR LACK OF JURISDICTION

(Number and Title Omitted) (Filed: April 11, 1969)

Come now the defendants, Rolfe Christopher and Gary Christopher, and move the Court to dismiss the action because the complaint fails to establish a basis for this Court's jurisdiction, there being no factual allegations as to the amount of plaintiff's damage, if any, caused by any of the acts complained of, and the amount involved in fact is less than that provided by Title 28, §1332, of the United States Code.

WHEREFORE, defendants move the Court to dismiss this suit for lack of jurisdiction of the subject matter.

Defendants' Motion to Dismiss for Failing
to State a Claim Upon Which Relief Can
Be Granted

Defendants move for an order dismissing the action because the complaint fails to state a claim against defendants upon which relief can be granted, and as grounds of such motion show unto the Court:

1.

As a matter of law plaintiff has no property interest or right in "trade secrets and know how" as such.

That trade secrets and "know how" are not exclusive property of plaintiff and plaintiff is not entitled to protection or relief against any party who obtains, uses or discloses plaintiff's trade secrets or know how unless the same have been obtained by fraud or unlawful means. It is not alleged in the complaint, nor could it be truthfully alleged that defendants violated any law or regulation in exercising their rights to use the air space in, over and around plaintiff's properties, and affidavits of Rolfe Christopher and Wayne Gregory, attached as Exhibits "A" and "B", are submitted in support of Grounds 1 and 2 of this motion.

2.

Plaintiff's properties are open to view and could be photographed from adjacent public highways, navigable waters, bridges or railroad rights of way, and plaintiff has no right of "privacy" to prevent viewing and photographing their property and installations, and the complaint states no facts establishing any unlawful conduct on the part of defendants, and is therefore insufficient to state a cause of action.

3.

It is apparent on the face of the complaint and from the allegations therein that plaintiff has not sustained damages of any sum within the jurisdiction of this

Court, and the filing of this suit is not to obtain relief against these defendants, but for the collateral purpose of seeking the identity of the person or persons who are alleged to have employed defendants. The identity of such person or persons as between plaintiff and defendants is purely a collateral matter not subject to discovery.

4.

Defendants further show unto the Court that the complaint is insufficient to state any grounds of relief against these defendants, in that there is no allegation of fact showing that plaintiff has been damaged in an amount within the jurisdiction of the Court, and no facts are alleged authorizing the granting of any of the relief prayed for.

WHEREFORE, defendants pray the Court that upon hearing hereof that this their motion to dismiss for lack of jurisdiction and motion to dismiss for failing to state a claim upon which relief can be granted be sustained, and that plaintiff's suit be dismissed, and for such other relief in the premises as defendants may show themselves entitled to receive.

/s/ David J. Kreager
Beaumont Savings Building
Beaumont, Texas 77701
Attorney for Defendants

EXHIBIT "A"

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

Rolfe Christopher, being duly sworn, upon oath states that he is one of the defendants in Civil Action 6258, United States District Court, Eastern District of Texas, Beaumont Division, styled E. I. duPont deNemours Company, Inc. vs. Rolfe Christopher and Gary Christopher.

Affiant is engaged in business as a commercial photographer and has been so engaged for himself as Christopher Studios in the City of Beaumont for 23 years. The photographs referred to in plaintiff's original complaint were taken from an airplane flying adjacent to plaintiff's properties. The properties of which photographs were taken lie adjacent to navigable waters, to wit, the Neches Ship Channel, and public highways, to wit, State Highway 347, and to railroad rights of way. Such properties are open to view and substantially the same photographs of the same areas could be taken from the public highway from the highway overpass near plaintiff's property, from the railroad right of way, or from the navigable waters adjacent thereto. At no time did affiant enter upon any of plaintiff's property or encroach or trespass thereon.

FURTHER AFFIANT SAITH NOT.

/s/ Rolfe Christopher

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by Rolfe Christopher, on this 10th day of April, 1969.

/s/ Doris F. Greeves
Notary Public in and for
Jefferson County, Texas

[S E A L]

EXHIBIT "B"

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

WAYNE GREGORY, being duly sworn, upon oath states as follows:

My name is Wayne Gregory and I am twenty years of age. I reside in Jefferson County, Texas. I am licensed both as a commercial pilot and as a flying instructor by the Federal Aviation Administration (Department of Transportation).

On or about the 19th day of March, 1969, I was employed by Rolfe Christopher to fly Piper J-3 single engine 85 hsp. airplane over certain portions of Jefferson County, Texas, and during said flight did fly adjacent to plaintiff's property, at which time Mr. Christopher did take aerial photographs described in this suit.

At all times my airplane was not less than 500' in height above all structures and not less than 500' in

radius from said structures. At no time was my flight either in manner, height or any other regard, careless or reckless nor would in any manner endanger life or property. I circled the area of the construction but the path was over vacant land. There was a considerable area of basically vacant land and I was at such altitude that an emergency landing could have been easily made without hazard to persons or property.

The flight in question was at all times at heights in excess of the minimum heights set by all regulatory agencies, including but not limited to the F. F. A. Standards. The flight was not over a city, town or settlement, or open air assembly of persons. In this regard, I am familiar with and have studied the regulations applicable to a flight of this type and I am fully qualified to state under oath that my flight did not violate any of said standards and that such flight did not violate any law.

I made this same flight in the same airplane N98059 on March 10, 1969 at which time others took photographs of the same area at the same altitudes and basically the same radius.

/s/ Clifton Wayne Gregory
WAYNE GREGORY

SWORN TO AND SUBSCRIBED before me by the said

Wayne Gregory, this the 10th day of April, 1969, to
certify which witness my hand and seal of office.

/s/ Carol Lyle
NOTARY PUBLIC IN AND FOR
JEFFERSON COUNTY, TEXAS

[S E A L]

..oo00oo..

* * * * *

(NOTE: MOTION TO POSTPONE TAKING OF DEPOSITION
OF DEFENDANTS AND ORDER THAT DEPOSITIONS
BE POSTPONED PENDING HEARING ON SAID
MOTION OMITTED BEING FILED IN THE
ORIGINAL FORM.)

* * * * *

..oo00oo..

RESTRAINING ORDER

(Number and Title Omitted) (Filed: April 17, 1969)

By agreement of the parties hereto, who have
waived the posting of security, it is ORDERED:

(1) Defendants are and shall be enjoined, pend-
ing further order of this Court, from taking any further
photographs of DuPont's Beaumont Works without the permis-
sion and consent of the plaintiff and from further cir-
culating, or distributing or showing to any person any
of the photographs or copies thereof taken by them of said
Beaumont Works on March 19, 1969, and from delivering the

negatives of the photographs taken by them of DuPont's Beaumont Works on March 19, 1969, to any person, firm or coporation other than plaintiff, or permitting any copies to be made therefrom;

(2) Defendants, and each of them, and all persons, firms or corporations to whom said photographs or negatives or copies thereof of DuPont's Beaumont Works taken on March 19, 1969 were delivered, circulated or shown are hereby restrained and enjoined from circulating or publishing said photographs or copies thereof or in any way using said photographs or any information obtained therefrom for any purpose whatsoever, pending further order of this Court;

(3) Defendants shall forthwith serve upon each person who engaged them to take the photographs in question, or to whom they have shown, delivered or circulated said photographs in question, or a copy thereof, a copy of this order of Restraint, and make return to this Court, under oath, decreeing that each of said persons has been so served and serve a copy of such return upon counsel for plaintiff.

DONE upon this the 17th day of April, 1969.

/s/ Joe J. Fisher
JUDGE PRESIDING.

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Robert Q. Keith
ROBERT Q. KEITH, Attorney for Plaintiff.

/s/ John G. Tucker
JOHN G. TUCKER, Attorney for
Defendants.

..oo00oo..

MOTION TO COMPEL ANSWER

(Number and Title Omitted) (Filed: May 2, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW plaintiff in the cause above captioned, E. I. duPont deNemours & Co., Inc. and respectfully moves and prays, pursuant to Rule 37, that defendants Rolfe Christopher and Gary Christopher be directed to answer the following questions propounded to him upon his oral deposition, and in support would show unto the Court:

I.

Pursuant to Order of the Court and subsequent agreement of counsel the oral deposition of Rolfe Christopher was taken upon April 22, 1969. Upon certain pages of the said Christopher's testimony, which are attached hereto and labeled Exhibit A, the defendant Rolfe Christopher was asked numerous questions upon oral examination relating to the identity of the person, firm or corporation who had employed him to take photographs of plaintiff's Beaumont Works, and particularly the Methanol Plant thereof under construction. In each instance, as reflected upon the foregoing attachments defendant declined and refused to answer

questions relating to the identity of the person who engaged him to take such photographs and to whom he circulated, published or otherwise showed said photographs.

II.

Plaintiff would show that the evidence sought is material and relevant to the issues involved in this case and is not privileged from discovery.

III.

In further support of this Motion, plaintiff would show that upon oral examination of defendant Rolfe Christopher he stated that he took the photographs in question at the instance of a third person and that the only reason that he refused to disclose the identity of the third person was that the latter did not want his identity known to plaintiff. Defendant Gary Christopher stated that the only reason he refused to disclose the identity of the third person was, insofar as plaintiff is concerned, "none of your business."

WHEREFORE, premises considered, plaintiff prays that defendants Rolfe Christopher and Gary Christopher be directed to answer upon oral examination questions relating to the identity of the person, firm or corporation who engaged them or either of them to take the photographs of plaintiff's plant in question and to whom they have delivered, circulated or published said photographs, and

to whom they or either of them have directed a statement
for services rendered.

Respectfully submitted,

MEHAFFY, WEBER, KEITH &
GONSOULIN
Attorneys for Plaintiff

By /s/ Robert Q. Keith
Of Counsel

1400 San Jacinto Building
Beaumont, Texas

- - - - -

* * * * *

(NOTE: PORTIONS OF QUESTIONS AND ANSWERS PRO-
POUNDED TO DEFENDANTS UPON THEIR ORAL
DEPOSITIONS, ATTACHED TO FOREGOING MOTION
TO COMPEL ANSWER OMITTED BEING FILED IN
THE ORIGINAL FORM.)

* * * * *

..oo00oo..

PORTIONS OF DEPOSITION OF
ROLFE CHRISTOPHER

(Number and Title Omitted) (Filed: May 14, 1969)

* * * * *

(3) ROLFE CHRISTOPHER,

having been first duly sworn, testified as follows, to-
wit:

DIRECT EXAMINATION

BY MR. KEITH:

Q Your name is Rolfe Christopher and you live on Zavalla Street in Beaumont?

A Yes.

Q You are a commercial photographer?

A Yes.

Q And have been for how long?

A Thirty-three (33) years.

Q All of that in Beaumont?

A Except during the war.

Q How many people are employed by your office?

A Three.

Q And who are they?

A Gary, Ted and I -- well, Gary and Ted, three of us.

Q Gary Christopher is your son?

A Yes.

Q And he is an employee of yours?

A Yes.

Q And Ted Atwood?

(4) A A-t-w-o-o-d.

Q Without inquiring as to how much, do you pay each of these persons a regular salary or on a commission basis?

A A regular salary.

Q So whether they work 12 hours a day they make the same amount of money?

A Yes, sir.

Q Do they ever develop the photographs you take?

A Yes, right.

Q Are all three of you skilled as photographers and developers?

A Yes, sir.

Q Do you send work out to be processed?

A Yes, sir.

Q What type?

A Color.

Q Do you do any of your own color developing?

A No.

Q Have you ever?

A No, sir.

Q How about movie pictures?

A No, sir.

Q Do you develop those?

(5) A No, sir.

Q Either black and white or color?

A No, sir.

Q On March 19, 1969, did one of your employees take some pictures of the DuPont plant in Beaumont?

A Yes, sir.

Q Who was that employee?

A Gary.

Q What time of day were those photographs taken?

A Around noon sometime. I don't know the exact time of day.

Q All right, how many photographs were taken.

A I don't know exactly how many. I don't know that.

Q How many prints were made of those photographs?

A I don't know exactly how many prints.

MR. KREAGER:

You mean of each?

Q I am going to narrow my questions. Who would know?

A I didn't count them, and on a job like that I never count the amount.

Q Is there any possible way for you to establish the number of pictures that were taken?

(6) A Yeah, every negative is in Dave's possession, or if he has turned them over to you, in your possession.

Q But you have no other way though than just count them, you say all the negatives?

A Right.

Q You have made no count of the number of pictures that were taken?

A No, sir.

Q Do you have any record of the number of prints that were made?

A No, sir, I did not count them.

Q All right, now by print, that is just the actual photographs that I see, is that correct?

A Right.

Q Now were all of the prints color, or black and white, or were they a mixture?

A Both.

Q How many color prints were made?

A I don't know.

Q How many black and white prints were made.

A I don't know.

Q Were they all the same size or were they different sizes?

(7) A I think we made two different sizes, 11x14 and 8x10.

Q How many 8x10 were made?

A I don't know.

Q How many 11x14?

A I don't know.

Q Is that the size, 11x14?

A Yes, sir.

Q Is there any way to establish that fact?

A Gary may have counted them.

Q You have no other record whatsoever that would show how many pictures you took?

A No, no, because I don't know how many were done at the same time.

Q Is there any possible way to inventory from either film packs or from an inventory of your photography paper or negatives?

A No, no. I could give an estimate. It was more -- it was less prints made than negatives because I just put everything in. I have nothing in my possession now of that, and it was just routine, that is the reason until this situation came up -- that is the reason I have no reason to know.

Q Well, tell me how many different photograph shots (8) were made?

A I don't know.

Q Give me your estimate as to the range of them?

A Oh, I would say about nine exposures. This is just an estimate, and somewhere around that amount of black and white.

Q What do you mean nine exposures?

A Nine negatives that I put in the envelope that

I gave to Mr. Kreager.

MR. KREAGER:

That would be color.

A Color, yes, sir.

Q I will clear it up, Dave. How many total pictures?

A Total black and white?

Q Total pictures?

A I would say around 15 pictures.

Q All right, that is different shots?

A Yeah, but I put everything that I had in that envelope in toto.

Q I will get to that, but the camera shutter flickered 15 different times?

A Yeah, I would estimate 15 different times.

Q And what type of camera was used?

A Well, it is a make-shift thing. It is about 20 (9) years old, one part off of one thing and another part off of another.

Q What is it?

A It is a 4x5 box with lens on it.

Q What type lens do you have on it?

A I don't know. It is a war surplus lens. It is about 20 years old. It was done so long ago I don't remember real well, but I think I got it from Majestic about 20 years ago, and it is a make-shift affair on an old

box, and all of it was probably 25 years old, that's what I used.

Q Describe the lens to me as to it's type?

A It is a long focal length lens set in a box. That is the only identification I can give you because it has no written matter of any sort because a plate was taken off of one and put on the box and put together.

Q All right, what is the focal length?

A I don't know. It doesn't have a focal length on it.

Q Why do you use that particular camera?

A Because I know that is the type that I like to use.

Q Why do you like to use it, because it takes a picture of objects a long distance away?

A Right.

Q What is the shutter speed?

* * * * *

(28) A Yes, as well as I remember there were two.

Q Now can you establish on what day you got all this mass of pictures together?

A Black and white and color, no. The pictures were made on the 19th and on the 28th is when I brought them to Dave. That was nine days shooting, developing, processing and delivery, and Dave got them on the 28th.

Q Of March?

A Yes, sir.

Q All right, now can you talk with Gary and see if you can figure out --

A Whatever he says is all because I can't argue with that figure at all.

Q From Gibbs?

A If he had twenty I could argue or if he had five I could argue but if he has 8, 9 or 10 I will accept it. That seems funny to you, but I really don't keep up with it because it has never been an issue before in the 23 years I have been in business for myself, and I have been a photographer for 33 years. It has never been an issue so that's the reason on this situation.

Q All right, now you delivered these photographs to someone?

A Yes, sir.

(29) Q On what day did you make that delivery?

A I don't know the exact date, I do not know.

Q What day do you believe it was?

A I believe, let's see -- oh, say the 26th, right along in there.

Q All right, and did you deliver them to an individual in person?

A Yes, sir.

Q Was he present at the time you delivered the photographs?

A He?

Q The individual?

A I delivered them to an individual.

Q All right, was that individual male or female?

A A female.

Q Had that individual ordered the photographs?

A No, sir.

Q Had you had any discussion with the female about the photographs prior to the time you delivered them?

A No, sir -- no, sir.

Q All right, did you deliver the pictures to the female?

A I just laid them there on the desk and walked out.

(30) Q Were they sealed?

A No, sir.

Q Was a bill in with the pictures?

A Yeah, I believe it was, and I believe it was just photographic services, \$200.00.

Q Was it \$200?

A I believe it was \$200. Gary can get that over the phone if you want him to, but I am almost positive.

Q Have you been paid?

A No, sir, I haven't.

Q Now you say you got the pictures back on what day?

A On the 28th. I can establish that.

Q All right, now was that before or after you had had your conversation with me?

A That was after I had the conversation. Boy, this is hard to reconstruct.

Q Well, you had some conversation with me?

A Yeah.

Q And at that time I asked you who had employed you?

A Yes.

Q And told you I represented DuPont and they wanted to know who employed you, is that right?

A Uh-huh.

(31) Q And you left my office saying in essence "I am going to get the pictures", is that right?

A No, I didn't. Anthony gave them to me.

Q Just answer my question?

A Excuse me.

Q When you left my office you did not have the photographs?

A No, sir.

Q All right, who did you get the pictures from?

A Anthony gave them to me.

Q When you left my office you did not have the photographs?

A No, sir.

Q All right, who did you get the pictures from?

A Anthony.

Q Anthony Brocato?

A Yes.

Q Had you delivered them to Anthony or his secretary?

A No.

Q So Anthony at this point was a third person to this procedure?

A Yeah.

Q There was you and the girl you delivered them to and (32) then Anthony?

A Right.

Q All right.

A I got kind of addled there.

MR. KREAGER:

Listen to his questions.

Q And it was on the 28th that you received the photographs back, is that right?

A Right.

Q Did you count them at that time?

A No, sir.

Q Did you count them at the time you delivered them to this girl?

A No, sir.

Q Have you since counted them?

A No, sir.

Q So what did you do with the pictures once you got them back from Anthony?

A I carried them to Dave.

Q All right, this is Anthony Brocato who is an attorney here in town?

A Yes, sir.

Q And you took them to Dave Kreager who is also an attorney here in town?

(33) A Yes, sir.

Q Have you seen the pictures since?

A Yes, sir.

Q Where?

A In Dave's office.

Q When?

A Gosh, I don't know, several days after that.

Q Did you count them at that time?

A No, sir.

Q Did the photographs have any marking on the back of them?

A Not that I remember.

Q Do you have a green stamp you customarily put on the back of photographs?

A I sure did.

Q Did you stamp these?

A I don't believe I did.

Q Did you number them in some way?

A No, I don't believe they are numbered.

Q Would it be possible to look at the photographs and state they came from you shop, whether you had ever seen them or not, is there some type of identification built into the paper or any type of insignia whatsoever?

(34) A No, sir.

Q So if you looked at the photographs you could not tell whether they came from your shop or not unless you developed them?

A That's right.

Q Ordinarily you have no type of identification?

A No.

Q Do you know of your own knowledge the number of people who have seen these photographs from the time they were taken on March 19 until the time they were delivered to Mr. Kreager?

A No, sir.

Q We do know they were exposed to two of your employees

A Yes, sir.

Q And to Mr. Gibbs?

A Yes, sir.

Q How many people does he have employed by him?

A One-hundred.

Q One-hundred?

A Maybe 75 or 100 that works at Majestic, in and out.

Q So it was open to review by any of the 75 people there, is that right?

MR. KREAGER:

Do you know?

A No, I don't know.

(35) MR. KREAGER:

All right, tell the man.

A No, I don't know.

Q He has 75 employees?

A Somewhere around that.

Q Working at that plant at Tenth and Calder?

A Right.

Q You don't know how many saw them or were likely to see them?

A No.

Q You don't know how many actually saw them?

A No.

Q Then you delivered them to this woman, and you don't know how many of them she saw, is that right?

A I don't know --

MR. KREAGER:

Just answer yes or no.

A No.

Q Do you know to whom she showed the photographs, if anyone?

A No.

Q Do you have personal knowledge as to when Mr. Brocato came into possession of the photographs?

A No, sir.

Q Do you know why he came into possession of the (36) photographs?

A No, sir.

Q Why did you select this Ekta color?

A That is the type we use.

Q Why did you select this Pan color?

MR. KREAGER:

Incidentally on that, it is a professional Ekta color.

A Right.

Q From whom do you buy the film?

A Majestic.

Q And what is it's technical name, Rolfe?

A Ekta color, Ten, I believe.

Q Is that the type of color films that you use for aerial work?

A What?

Q Is that the type of color films that you use for aerial work?

A I believe that's all we use.

Q What about black and white films?

A Royal Pan.

Q Is Royal Pan just a brand name?

A It is a Kodak brand name film.

Q Is that a particular type film?

(37) A Yes, sir.

Q If I went to Majestic I could get me a package of Ekta color Ten, and a package of Royal Pan and I would have it?

A Right.

Q Do you ever use any other type of film other than these two?

A No, I believe that's all we ever use.

Q Is that the first time you had ever taken aerial photographs of the DuPont Beaumont plant?

A No, sir.

Q When was the next time previous to that?

A I don't know.

Q How many times have you taken aerial photographs of the Beaumont DuPont plant?

A I don't know how long. I don't know. How long have they been out there -- several times.

Q At whose request prior to that?

A I don't remember.

Q Did you have some discussion with some man over the telephone about these photographs on March 19?

A Yes, sir.

Q About noon time?

(38) A Yes, sir.

Q Did the man call you at home?

A Yes, sir.

Q Did he ask you if you were taking photographs of the Beaumont DuPont plant?

A Yes, sir.

Q What did you tell him?

A Yes, sir.

Q Did he ask you for whom you were taking them?

A Yes, sir.

Q What did you tell him?

A I told him I would contact my client and if it was okay with him I would tell him.

Q Didn't you tell him you did not know?

A No, I don't believe I told him I did not remember.

Q Do you know the man's name?

A He identified himself as Brook.

Q Rolfe, don't you remember telling him, "I don't know who they were being taken for"?

A Well, the reason I would say that --

MR. KREAGER:

Do you remember or not, just answer the question?

A No.

Q All right, I will put it to you this way, do you (39) deny that's what you said to the man on the telephone?

A I told the man I would contact my client and ask him. How would I tell him I don't know when I said I would contact my client?

Q So you deny you told him you don't know?

A He called me a number of times.

Q Did he leave word and ask you to return his call?

A Yeah, I said if my client permitted I would call him back, and I did not call him back.

Q Did he ask you who your client was?

A Yes, sir.

Q Did you tell him?

A No, sir.

Q Did he ask you why you had taken the photographs?

A I don't remember.

Q Did you state to him you had authorization to take them?

A I didn't know whether I had authorization to take them. I didn't know whehter DuPont authorized them or not.

Q Did you say to him "we had authority to take them"?

A No.

Q Do you deny saying that, Rolfe?

A As well as I remember I don't remember saying we (40) had authorization to take them.

Q You didn't say to him, "I am sure we had authority from DuPont before we took them"?

A I don't remember making that statement.

Q Do you deny making the statement or you just have no recollection of making that statement?

A I have no recollection of making that statement.

Q Did you then contact your client?

A Yeah.

Q On that day, the same day Mr. Brook called you?

A Either that day or the next day, I don't remember.

Q Did you talk to your client in person or by telephone?

A By telephone.

Q Did you seek his authority to disclose to Mr. Brook your client's identity? She can't hear you nod. Read the

question.

(Question read by the reporter)

A The client did not want to be identified.

Q Just answer my question. My first question was did you seek your client's authority to disclose your client's identity to DuPont?

A Yes, sir.

Q Did you receive authority from your client to disclose his identity?

A State your question again.

Q I say did you receive authority from you client to disclose his identity?

A No.

Q Are you a lawyer?

A No.

Q A priest?

A No.

Q A medical doctor?

A No, sir.

Q And you certainly don't hold yourself out as practicing any of those professions as you took these photographs?

A No.

Q Are you an ordained minister of some kind?

A No.

Q This was just an ordinary commercial transaction that you were involved in?

A Yes.

Q Did you have any subsequent conversations with any representative of DuPont seeking to ascertain the identity of your client after March 19, you said Mr. Brook called you, you had a telephone conversation with him about noon, is that right?

(42) A Uh-huh, somewhere around there.

Q All right, and then he called back a number of times you say?

A Yes, sir.

Q I take it he was something of a pest to your home and business that day and the next, is that right?

A I would say.

Q And you did not speak with him further?

A No, no time.

Q Some further time or just one time on March 19.

A One time.

Q All right, did either you wife or either of your employees, Christopher or Atwood, speak with him?

A Yes.

Q Did Atwood speak with him?

A Yes.

Q Were you present to hear one end of the conversation

A No, I did not listen to the conversation.

Q Did you hear what Ted said from his end of the conversation?

A No, I didn't hear it.

Q How do you know it was Brook?

A He identified himself as Brook.

(43) Q Did he ask for the photographer when he talked with you?

A I don't remember.

Q And you say it was either on the 19th or the 20th when you called your client and asked him if you could disclose his identity, is that right? She can't hear you nod.

A Yes.

Q And he said no?

A He said no.

Q All right, in the meantime employees or persons claiming to represent DuPont had been calling you frequently on the phone attempting to get information about this photography mission?

A Uh-huh.

Q Rolfe, nevertheless with all of that you delivered these photographs first to Gibbs and then to your client, is that right?

A Yes.

Q Did you seek any legal advise in the interim?

A No.

Q Now can you say with certainty that it was on the 28th that you delivered the photographs or the 26th?

A I would say with certainty I delivered the photo-
(44) graphs on the 28th.

Q What time of day did you deliver these photographs to Mr. Kreager?

A Three thirty (3:30)

Q P. m.?

A P. m.

Q All right, what time did you obtain them from Mr. Brocato?

A I will guess now, the reason I know I made an appointment about 1:30.

Q About 1:30?

A Uh-huh.

Q On the 28th?

A Yes, sir.

Q Now what time of day was it that you delivered them to the lady that you first delivered them to?

A I don't remember at all.

Q Day or night?

A Well, it was day, office hours.

Q Do you know the lady's name?

MR. KREAGER:

Yes or no, did you or not?

A Yes.

Q Did you know her prior to the day that you delivered (45) the photographs?

A Yes, sir.

Q You know her by name?

A Yes, sir.

Q Do you know her to be an employee of your client?

A Yes, sir.

Q She appears to be at least?

A Yes, sir.

Q Now on what day were you engaged to take these photographs?

A I don't know.

Q Well, give me your best approximation?

A Oh, several days, two weeks.

Q Now were you contacted by letter or telephone or in person?

A As well as I remember, telephone.

Q Had you had any prior discussion with this client about taking such photographs?

A No, I believe -- lets see -- not in person. I am trying to reconstruct, I am sorry.

Q Now how many conversations did you have with this client about taking this set of photographs there prior to the fact?

(46) A As well as I can remember two.

Q Were both of them in person?

A I believe one in person and one by telephone.

Q All right, now which came first?

A In person.

Q All right, under what general circumstances did you happen to run into him, on the street or a social event or a club or at his office?

A At his office.

Q Did you go to his office to solicit business or did he call you up there?

A I believe he called me up there and said he wanted me to take them.

Q He called you up there and asked you to take photographs, is that right?

A Yes, sir.

Q Just relate to me the first telephone conversation, the tenor of it the best you can, and you have an excellent memory for people, dates and things, you know it and I do too?

A Yes, sir, I wasn't paying any attention. You have to remember, Bob, this is all just routine until you

called me one day, it really was.

Q All right, just give me the tenor of the conversation (47) on the telephone?

A Well, "I want you to do some work for me". You see, that's what I thought you wanted with me.

Q When I called you?

A Yes, I sure did.

Q Was that all there was, did he tell you when and where on the telephone?

A No, in person.

Q He just said in essence, "I want you to do some work for me"?

A Yes, sir.

Q And you went to his office?

A Yes, sir.

Q When he called you had you had any prior discussion about this particular mission at a party, for example?

A No, heck no.

Q There at the Beaumont Club or at some other event where you might have run into him?

A No.

Q Had you had any general discussion with him about the object of these photographs before his telephone call?

A I may have.

Q All right, under what circumstances, and just with (48) him?

A No party or anything, just with him.

Q At his office?

A Yeah, in his office.

Q Now had you taken photographs for him before?

A Yeah.

Q Okay, now outline for me that prior discussion in his office that you may have had, what was it about?

A He just said, "I have got some work for you to do, I want you to take the new construction".

Q Where did he tell you the new construction was?

A Of the DuPont area.

Q Who first brought up the name DuPont, did he or did you?

A I did not, no, he did.

Q Did this idea of taking these photographs originate with you or with the man who hired you?

MR. KREAGER:

Listen, get serious, listen to the question and just answer the question.

A What is the question?

Q The question was did the idea of taking these photographs originate with you or with the client?

A My client.

(49) Q All right, now as I understand your testimony, there was an office visit, a telephone call, a subsequent office visit and then the photographs and the matter of your visit to deliver the photographs, is that in essence your recollection of it? Your head is not rattling yet.

A Yes.

Q All right, now you think that you delivered the photographs on or about March 26?

A Right.

Q You think you took the photographs on or about March 19th?

A Right.

Q Now the office visit immediately preceding the photography mission was what day?

A I don't remember.

Q In rough terms?

A Several days, two weeks.

Q All right, we would say March 5 to 15th, is that right, would that be fair?

A That would be fair,

Q That would be fair?

A Yes, sir, that would be fair.

Q Do you remember what day of the week you went there
(50) to his office?

A No.

Q Do you have any way of establishing such facts?

A No.

Q Now the telephone call, Rolfe, come up, "I have some work for you", on what date was that?

A I don't remember.

Q What date was it in relation to the office visit?

A I don't remember.

Q Was it the same day or the day before?

A Maybe the day before, I don't remember.

Q All right, for example, if you went on Wednesday he may have called you Tuesday afternoon?

A Right, right.

Q Or he may have called you Wednesday morning?

A Right.

Q What about the prior office visit at which time there the general discussion was, "I want you to take some photographs of the new construction at DuPont"?

A Yeah.

Q What date was that?

A I don't remember.

Q In approximate terms what date was it in relation --

(51) A To the actual photographs?

Q Yes?

A That was within a period of two weeks, I will estimate the whole thing.

Q In your best judgment did this entire transaction take place during the month of March?

A It could easily have been.

Q Now did it occur prior to the first of March?

A I don't remember to be exact.

Q Well, would it have occurred prior to the first of February?

A No.

Q That would be roughly a six week period now?

A No.

Q Now incidentally, is this man a resident of Beaumont?

MR. KREAGER:

I advise you not to answer that question.

A I refuse to answer on Mr. Kreager's advice.

Q Do you know the man personally?

A Yes, sir.

Q Have you known him for a number of years?

A Yes, sir.

Q Have you taken photographs for him in the past?

(52) A Yes, sir.

Q Have you taken photographs of the DuPont plant in the past for him?

A No, sir.

Q Does he have an office in Beaumont?

MR. KREAGER:

I advise you not to answer the question.

Q Why don't you want to answer the question, Rolfe?

A My client doesn't want me to reveal it.

Q Is that the only reason, he doesn't want you to reveal his identity?

A Yes, sir.

Q You have no other reason whatsoever?

A No other reason.

Q Now all right, and if he would assent to your disclosing his identity you would readily do so?

A Yes, sir.

Q And would have done so on March 19?

A Yes, sir.

Q And if I discussed the matter with you on the 27th or 28th --

A Yes, sir.

Q Now at the time you were first in his office, we have four trips, we have office, telephone, office, photographs, (53) and office, and when you went --

MR. KREAGER:

Make it clear.

A I couldn't set down how many times I have been in my client's office. All of this is over a period of time, Bob.

Q I understand.

A And I am trying to do it just as carefully as possible but it is real hard to tell how many conversations. If I had my mind on it, I could tell you exactly, I assure you, but to me it was like this (making swishing sounds).

Q The first time you discussed this matter with your so-called client, who was present, just you and your client?

A Yes, sir.

Q Was there anybody else?

A No, sir.

Q Were any of his employees present?

A Not that I remember.

Q All right, is your client, so far as you know and believe, a regular salaried employee of a major manufacturing concern?

MR. KREAGER:

I advise you not to answer.

A I refuse to answer.

Q And again you refused solely because your client doesn't want his identity known, is that fair?

(54) A Yes, sir.

Q You decline to answer whether he is a regular salaried employee of a major manufacturing concern?

A Yes, sir.

Q So far as you know and believe does he have persons in his employ?

MR. KREAGER:

The same answer.

A I refuse to answer that.

Q Dave, this is unreasonable.

MR. KREAGER:

It is kind of a fine line, I don't know that.

Q I haven't asked him who his client is at this point, and as I understand it the Judge's instructions to us, that's all he was instructed not to answer, and there is a vast difference about whether he is an employee of a manufacturing concern and who he is.

MR. KREAGER:

I think I'm going to have to advise him as to questions that inquire into circumstances and facts that would reveal the identification without regard to anything, I will have to advise him not to answer it.

Q You weren't there, and I understand that, I appreciate your handicap but nevertheless the only question the court said could be sealed was the man's name, and I

suggest this is relevant for other purposes besides just who the man may have been.

(55) MR. KREAGER:

If you would indicate what you are getting at, maybe we can get to it.

Q It is a field of materiality on the matter of damages. It is one thing to accept Rolfe's word that he delivered it to somebody, and something else to make the appropriate proof as to the chain of custody which apparently nobody can make at this point. It might be one thing if these things fell into your hands or mine, but something else if they fell into the hands of experts in the field.

MR. KREAGER:

We probably lost the point of the exact question. The point I am going at is questions that would reveal any identity. So far as what Rolfe knows about custody or who might have had these pictures, he is going to answer every one of them and answer as honestly as he can.

Q He has not answered who he delivered them to?

MR. KREAGER:

He has told you other than the name.

Q I will ask you this question, Rolfe, did you deliver these photographs -- was it a secretary apparently that you delivered them to?

A I refuse to answer.

Q Was that in Beaumont, Texas that you delivered the photographs?

A I refuse to answer.

(56) Q Was it in Jefferson County, Texas?

A I refuse to answer.

Q Did you deliver them in person or by mail?

A In person.

Q Just so that the record maybe plain, you understand you are in this deposition pursuant to the agreement of your attorney, Mr. Tucker?

A Yes, sir.

Q And that it is in connection with the law suit brought by you and your son against DuPont -- brought by DuPont?

A Yes, sir.

Q And that we have already had one or two or three hearings in respect to this matter before Judge Fisher?

A No, sir, I don't know.

Q All right, you were in the Federal Court on Monday, the 14th of April, were you not?

A Yes, sir.

Q And you understand that I am not threatening you, I am just explaining to you if you refuse to answer my questions I propose to seek whatever relief maybe available

to my client under the federal rules?

A Yes, sir.

Q Was it in the United States that you delivered (57) these photographs?

A Yes, sir.

Q Was it in Texas?

A Yes, sir.

Q Did you leave town to deliver them?

A I refuse to answer that.

Q Did you mail them or did you deliver them in person?

A In person.

Q And for how long had you known the woman to whom you delivered the photographs?

A For years.

Q Well, that would cover as many as 2 or 200, how many?

A Oh, 20.

Q All right, do you know the general type of work she does, that is, whether she is a lawyer, a dentist, or a secretary?

A Yes, sir.

Q What is her general type of work?

A Secretary.

Q Sofar as you know, is she trained as a chemist or

chemical engineer or some type of technical expert?

A No, sir.

(58) Q You believe she is just an ordinary secretary?

A Yes, sir.

Q Was anyone else present at the time you delivered these photographs?

A I don't remember, maybe somebody in and out of the office and around.

MR. KREAGER:

Answer the questions, yes or no. Answer them directly.

A I don't remember.

Q Were there any men present?

A I don't remember.

Q Did you just leave them on her desk or did you just hand them to her?

A I put them on her desk.

Q If I suggest to you the name of a person would you admit that that was the name of the person who had employed you?

A No, sir.

Q Would you deny it?

A No, sir, I didn't say a word, I guess.

Q You would decline to answer if I suggest to you

the name of the person?

A Yes, sir.

Q Was it me?

(59) A I decline to answer.

Q Was it any employee of DuPont?

A I decline to answer.

Q Did he represent to you that he was an employee of DuPont?

A I refuse to answer.

Q Dave, I suggest that is highly material, what the representation was.

MR. KREAGER:

Yes, go ahead and answer that. Was it represented that this was for DuPont?

A There wasn't represented anything at all, no representation. I have no idea.

Q Well, did the man tell you, "I want you to take some photographs for DuPont" or "of DuPont"?

A Do you want me to answer as well as I remember?

Q Yes, sir, that's what I want.

A Of this I can't be definite but seems I remember it was of DuPont.

Q Now did he tell you that over the telephone or after you got to his office?

A Maybe both, I don't remember exactly.

Q Certainly when you got to his office --

A Sure.

(60) Q Now what did he tell you that he wanted you to photograph?

A New construction.

Q Now Rolfe, relate to me the transaction as best you possibly can, what time you got there, what was said, what general subjects were discussed?

A New construction of DuPont.

Q No, you had some general discussion with him about the weather or the ball game?

A Always I have that. The University of Texas when I see you.

Q All right, now what did he say that he wanted you to do, he didn't just say, "Rolfe, new construction", he said he wanted you to do something, what did he say?

A That new construction sticks out like a sore thumb.

Q You mean that man leaned back behind his desk and said, "new construction", at which time you got up like a robot?

A Bob, he wanted new construction of DuPont, I remember that as easy as pie.

Q Did you just conclude that or did he tell you?

A He told me that.

Q He said, "Rolfe, I want you to", now just pick up the conversation.

(61) A As well as I can remember he said, "I want the new construction adjacent to the right-of-way at the north end of the plant."

Q By right-of-way you mean what?

A KCS right-of-way.

Q Did he tell you what he wanted to show by those photographs?

A No sir -- no sir.

Q Did he tell you whether he wanted photographs by air or taken from the right-of-way?

A By air.

Q Did he specifically request you to take aerial photographs?

A Yes, sir.

Q And there is no question in your mind about that?

A No, sir.

Q Did you ask him whether he wanted aerial photographs or did he tell you?

A Aerial photographs, and I am trying to reconstruct it for you as well as I can.

Q Did he tell you on what day he wanted you to take these photographs?

A No, sir.

(62) Q Did he tell you what time of day?

A No, sir.

Q Did he tell you what day of the week he wanted you to take these photographs?

A No, sir.

Q Obviously you wanted to know what his general object was so you can accomplish it?

A Yes, sir.

Q What was that approximately general object?

A New construction of the north end of the plant.

Q Did he tell you for what purpose he wanted these photographs?

A No, sir.

Q Did he tell you for whom he wanted you to take these photographs?

A No, sir.

Q When you rendered his bill did you render it to him or to someone else?

A To him.

Q Was that bill addressed to an individual or to a firm?

A I refuse to answer.

Q Again, I submit it is highly material to the issue, (63) and by that I mean, for example, you would either submit a bill to David Kreager or to Orgain, Bell

& Tucker, David would be the individual and Orgain, Bell & Tucker would be the firm, now did you submit a bill to an individual or to a firm?

A I refuse to answer.

Q Did you submit your bill to the same person who called you to take the photographs?

A Yes, sir.

Q Did you ever show to this individual who hired you the pictures that you took?

A No, sir.

Q Did you ever look at the prints in his presence?

A No, sir.

Q Had you had any discussions with him about the prints?

A No, sir.

Q Have you had any discussion with him other than the telephone conversation wherein you wanted his authority to disclose his identity?

A No, sir.

Q How many discussions have you had with him since the fact?

A I don't know.

(64) Q Reconstruct it as best you can.

A I would say three to four.

Q In person or by phone?

A In person.

Q How many by phone?

A None that I remember. I don't recollect a phone call.

Q When Mr. Brook called you on the 19th you went to this man's office?

A No.

Q You listen to my question. You are trying to outguess me.

A No, I've never tried to out-guess you, Bob.

Q How many times did you discuss that subject with him since the photographs were taken or since Mr. Brooks called you on the phone?

A It is a situation here that I can't answer exactly.

Q Read the question, please.

(Question read by the reporter)

Q How many times have you discussed the subject with the client after Mr. Brooks called you on the telephone?

A As well as I remember about 3 times.

Q All right, How many times on the telephone?

(65) A Once.

Q And twice in person?

A As well as I can remember.

Q And each time in person would be in his office?

A No.

Q Where were you when you discussed it with him?

A I was in the attorney's office.

Q And that would be Mr. Brocato?

A Yeah.

Q At that time Mr. Brocato was representing you or your client?

A Representing my client.

Q Did he ever represent you?

A Yes, sir.

Q For a couple of hours or for how long?

A About a couple of hours.

Q On what day?

A The 28th.

Q Is that the same date you and I had our discussion, and that would be Friday?

A Yes, as well as I remember, Bob.

Q Now to place these conversations and contacts, on the 19th you called your client to ask if you could disclose his (66) name, and that was the telephone conversation, is that right?

A Yes, sir.

Q And he said no?

A Yes, sir.

Q Did he say why not?

A No, sir.

MR. KREAGER:

On that, I think you better make it clear --

Q Let me go ahead and take his deposition.

MR. KREAGER:

He is bothered by something I think will help you.

Q I will be perfectly happy for that.

MR. KREAGER:

I am going to say roughly what I understand, and you get the facts. What I understand is his client was called, and when he kept calling there that has been causing him some problems on a number of these conversations. He left word and was called back. He did not actually talk to his client when he first called.

Q Give me the facts.

A I talked with his secretary. These things get confusing.

Q We want to untangle them, that's what we are here for. All right, you called his secretary, is that right?

A Yes, sir.

Q On the 19th.

(67) A Yes, sir.

Q What time?

A Oh, that afternoon sometime.

Q Four or five o'clock?

A Yes, I will say four.

Q But it was about noon when Mr. Brook called you?

A Somewhere around there.

Q In the meantime Gary had come in with the pictures?

A Yes, sir, somewhere --

MR. KREAGER:

Now be exact.

A As exact as I know, right after noon.

MR. KREAGER:

If you don't know, say you don't know.

A I don't know.

Q Approximately what time?

MR. KREAGER:

Just the approximate time.

Q Dave, quit coaching him he has been on the witness stand more than you and I have.

A Yeah, but not for an hour-and-a-half. I would say as well as I can remember around one or one-thirty.

Q All right, so you had had the black and white in your possession some 3 hours before this conversation?

A Yes.

Q Did you talk with the man when you first called (68) his office?

A Give me the question again.

Q Did you talk with the man when you first called his office?

A No.

Q The first time you called there you say was 3:00 o'clock?

A Yes, sir.

Q All right, why did you wait 2 or 3 hours?

A I don't know, maybe I didn't wait but an hour-and-a-half, you know, in sequence of time.

Q All right, in the meantime did you discuss it with anyone else other than Gary?

A No, or whoever was in the shop.

Q All right, that's my question, who was there in the shop?

A Ted was in and out, and I don't remember whether Virginia overheard it or not.

Q That would be your wife?

A Yeah, sure.

Q Did you discuss with his secretary the reason you were calling your client?

A Yes.

(69) Q And what did you say to her?

A I said, "Mr. Brook wants to know" --

Q Did you tell her who Mr. Brook worked for?

A Yes, sir, a representitive.

Q All right, what did you tell her?

A I said, "Mr. Brook, who said he worked for DuPont wants to know the identity of my client".

Q And why you were taking the pictures?

A Right, and I told Mr. Brook I would call him back, and I did not call him.

Q Now what did you instruct this lady or ask this lady to do, what was your conversation with her?

A I said, "would you contact my client and see if he wants to give it", and she said, "yes", and he said no.

Q All right, did you hang up or did you hold on to the phone?

A No, I hung up.

Q All right, what took place next?

A As well as I can remember she phoned back and said no.

Q All right, was that the same afternoon?

A I don't believe it was, Bob.

Q You think it was when, Rolfe?

(70) A I believe it was the next day.

Q All right, before or after noon?

A Before noon, I will say that but I don't remember

to be exact.

Q All right, did you talk with her on both occasions?

A Yes, sir.

Q In the meantime did you talk with your client?

A No.

Q Up to that point you had not personally discussed it with the client?

A No.

Q Whom else had you discussed it with?

A No one except Gary.

Q All right, at the time she called back had you already delivered the negatives to Majestic?

A Yes.

Q But you hadn't got the actual prints themselves yet?

A No, no.

Q Okay, now let's see, that was on the 20th of March that the lady called you back and, let's see, that would have been a Thursday, when is the next conversation you had with your client?

A As well as I can remember it was on the 28th. When (71) did I have my conversation with you, the 27th?

Q Just stick with my question.

A Okay, excuse me.

Q You think it was on the 28th that you had your next conversation?

A As well as I can remember.

Q All right, was it at his office?

A No.

Q Was this at Mr. Brocato's office?

A Yes, sir.

Q When did you have the next conversation with him after you had the conversation at Mr. Brocato's office, the same day or the following day?

A It was a few days later.

Q And where was that?

A As well as I remember it was in his office.

Q Who all was present?

A He was present.

Q Who else?

A I don't remember anybody else.

Q Did anyone come in or did you all have any phone calls during that time?

A No, no.

(72) Q Did he tell you at that time why he didn't want his identity known?

A No.

Q Did you ask him?

A No.

Q Did you ever discuss with him why he didn't want his identity known?

A No, sir.

Q When was the next time you ever had any discussion with him about making known his identity?

A To his secretary.

Q On what date, on the 19th?

A On the 19th.

Q All right, on that date did he tell you he didn't want his identity known?

A No, sir.

Q Did you ask him?

A No, sir.

Q Did you ask him if he sought permission from DuPont?

A No, sir.

Q Did you take steps to procure permission from DuPont?

A No, sir.

(73) Q Why not?

A Well, I thought it was okay.

Q Who told you it was okay?

A No one.

Q Have you ever told anyone for whom you were taking the pictures?

A No.

Q Did you ever tell Mr. Brocato?

A No.

MR. KREAGER:

I will have to instruct him on that, and you already have.

Q Did you discuss it with your attorney?

MR. KREAGER:

That of course involves the attorney and client privilege.

Q Not what was said but just the fact of the conversation.

A I told Dave.

Q Did you tell anyone else?

A No.

Q Did you offer to tell me if I wouldn't pass it on?

A Yes.

Q Did I ask you not to pass it on?

A Yeah, that's before I got a lawyer though.

(74) Q Did I take advantage of it?

A No. I am sorry, I am getting addled by this thing --

Q Did you offer to tell me who it was?

A Yes, sure, that was before I talked to Dave.

Q That's right, and at that time I told you if you told me I would of course be obligated to relate it to my client.

A Yes.

Q And you said, "under those circumstances then, I can't tell you"?

A Yes.

Q Did I press you and try to obtain the identity of the person?

A No.

Q Did I give you a man's name at DuPont and ask you to have your client call that man?

A Not that I remember.

Q You don't remember I wrote on the typewriter a man's name and telephone number on it?

A You gave me that and said that's the man to contact.

Q Mr. Kirk?

A Yes.

Q Didn't I put his phone number on it?

(75) A Yeah.

Q And suggest to you that you get your client to contact him, do you remember that?

A No, I don't remember that exact conversation. You gave me his name and said that's the man.

Q Get in touch with him or get your man to get in touch with him?

A I may not have registered that. I remember you gave me the man's name on a type written sheet of paper.

Q With a telephone number on it?

A Yes, sir.

Q Do you still have that?

A I don't know.

Q What did you do with it?

A I don't know. I don't know whether Dave has it or not.

Q Did you discuss with your client your client contacting DuPont?

A No.

Q Did you ask him to do so?

A I asked him did he want to reveal his name and he said no.

Q And he did not tell you why?

(76) A No, sir.

Q Do you have a copy of the bill that you delivered?

A No.

Q Do you keep a copy?

A No.

Q Do you keep a record of unpaid bills?

A Yeah, yeah.

Q In some type of ledger sheet?

A Yeah.

Q And you don't keep any duplicate copy of the bill?

A No, not unless they ask for one.

Q You don't keep one for your purposes?

A No, sir.

Q Do you know the business or profession of the person who engaged you to take these photographs?

MR. KREAGER:

You can answer that yes or no.

A Yes.

Q And for how long have you known this person?

A Years, say 20 years -- 15 or 20 years.

Q You say this job cost some \$200.00?

A Yes.

Q Did you agree on the price in advance?

A No, sir.

(77) Q Did he tell you to take a certain amount of aerial photographs?

A No, sir.

Q Did he tell you to take them from certain altitudes?

A No, sir.

Q Did you instruct Gary at what altitude to take them?

A No, sir.

Q Did you instruct him how many to take?

A No, sir.

Q How did you arrive at the price of \$200?

A Well, I just looked over the amount of pictures, roughly 15, and my having a plane and Gary going back and forth, I just said \$200. That's the way we came to the conclusion, I figured how much work generally.

Q Have you been paid any money?

A No, sir.

Q Now, at the time this unidentified man asked you to take these photographs, you had some idea as to the cost it would run, did you not?

A Yes, sir, I wouldn't make a living if I didn't.

Q All right, now you knew it would run approximately shall we say \$150.00 to \$200.00, is that right?

A Right.

(78) Q And those round terms you think --

A Right.

Q Did you ask for some deposit in advance?

A No.

Q You extended credit to him?

A Yes, sir.

Q And knew you were doing so?

A Yes, sir.

Q Did you extend credit to an individual or to a firm?

A I refuse to answer that.

Q Why do you refuse to answer?

MR. KREAGER:

Advice of counsel.

A Advice of counsel.

Q How long does it take you to develop shall we say 10 black and white photographs?

A Ordinarily?

Q Yes.

A About -- do you want me to give you kind of a sequence?

Q Sure.

A You go in a dark room and unload and put them in hangers and put them in developer for say 5 or 6 minutes, and put

* * * * *

(81) A I don't know definitely. Bob said they weren't stamped.

Q If they are not stamped, why did you decide not to stamp them?

A I need to tell you something. (At this point Mr. Kreager and the witness left the room for a conference). The black and white are relevant.

Q The black and white are what?

A Relevant. He just took that while he was there. I took the black and white to back me up just while I was there.

Q While you were where?

A While Gary was in the air. I just said shoot black and white too.

Q The man asked you for the color pictures?

A Right, right.

Q He didn't ask you for the black and white?

A No, I just took them to back me up.

Q All right, I didn't get all of that, I asked what he requested you to do, and you said he asked for aerial photographs of new construction?

A Right.

Q Now what else did he specify besides new construction, aerial photographs, the north end of the plant along side of the (82) railroad right-of-way?

A Color.

Q What else?

A That's all.

Q Did he discuss the grain of the film?

A Oh, no.

Q Why did you all select high noon?

A We always try to fly when the sun is best.

Q Best for what?

A Taking aerial photographs.

Q When is the sun best?

A We like to take them this time of the year anywhere from 11 to 2.

Q For what reason?

A Because the sun is best.

Q Best for what?

A Because your buildings would cast shadows, and it wouldn't be good.

Q The sun is best for what?

A Always when the sun is best for aerial photographs.

Q What are you seeking from the sun?

A Good light.

Q Of course so you can get better detail?

(83) A Yes, sir.

Q Is that the reason you picked noontime because you can get a clearer picture in proper focus?

A Sure, you get better lighting.

Q As to show more?

A Show better, not more.

Q Now he specified color?

A Yes.

Q Did he specify a particular size?

A No.

Q Now would your cost charge have been the same to aim for color plus black and white?

A No, if it was color I just put the black and white in to back me up.

MR. KREAGER:

His question was, was your price the same regardless whether black and white or color?

A No, it would have been less for just black and white but it would have been the same with color and black and white.

Q If you hadn't taken any black and white you would have still charged your \$200.00?

A Yeah, sure.

Q When you store these things how do you label them, Rolfe?

* * * * *

(88) Q Say you would number my pictures I, is that right?

A Yes, sir.

Q You wouldn't put them under the name of Mehaffy, Weber, Keith & Gonsoulin?

A No, in alphabetical order.

Q Would you put them under my name or Mehaffy?

A Mehaffy.

Q Do you have some index that you refer to or do you just go to that alphabetical file?

A Alphabetical.

Q What did you do with these negatives after you got them back from Mr. Gibbs the second time, did you separate them?

A They were in separate envelopes I am sure.

Q Were they put in an envelope that was identified in some way?

A Yes.

Q Now what did you do with the negatives?

A I gave them to Dave.

Q You did something with them between March 19 and March 28?

A Well, I had them laying on that table. Am I answer- (89) ing you correctly, I am trying to, Bob, I really am.

Q I'm sure you are, Rolfe.

A When this came up I told Gary to go get me the negatives.

Q All right, when he brought them to you were they just loose?

A They were loose.

Q They were loose?

A Yes, sir.

Q Was somebody's name on the envelope?

A Yes, sir.

Q Was your client's name on that envelope?

MR. KREAGER:

Do you remember or are you just talking?

A Well, I don't remember.

Q All right, between the time you had got them back from Gibbs the second time and the time you brought them to Kreager what did you do with them?

A The negatives were never in anybody's possession except the attorney and my attorney.

Q The attorney would be Mr. Brocato or Mr. Green or Mr. Weller?

A Right, right, right.

Q All right, now when did you deliver them to the (90) attorney as opposed to your attorney?

A Oh, he had them in his possession. I didn't deliver them to him.

Q The negatives?

A The negatives, right, right.

Q Who delivered the negatives to the attorney?

A Me.

Q When?

A The 28th -- the 28th.

Q All right, let's go through this little sequence

for the moment, who called and asked you to go to Mr. Brocato's office, your client or Mr. Brocato?

A My client.

Q Did he ask you to meet him over there?

A Yeah, he sure did.

Q Did you agree to meet him?

A Yes, sir.

Q Did he ask you to bring anything with you?

A That's what I'm trying to reconstruct --

MR. KREAGER:

Answer yes or no. The first thing, answer yes or no.

A I don't know just exactly.

Q Well, do you recall his saying, "bring the negatives (91) with you"?

A No, no.

Q Well, did you bring them with you to that first visit?

A No, I don't believe I did.

Q All right, at the time of that first visit your client was there?

A Yes.

Q Was anyone else accompanying him?

A No.

Q Mr. Brocato was there?

A Yes, sir.

Q Was there anyone else there besides you?

A Yes, sir.

Q All right, who?

A Mr. Green.

Q Anyone else?

A No, sir.

Q All right, were the photographs there?

A Yeah.

Q You don't know how long they had been there or how they had gotten there? All right, you remember now, tell me the sequence.

(92) A Yeah, I had a meeting with Anthony before my client ever --

Q Who called you to initiate that meeting?

A My client.

Q Asked you to go by and see Anthony?

A Right, right.

Q Did you have the negatives with you then?

A Then I got the negatives and brought them back up to that other meeting.

Q All right, was this all on the same day?

A Yeah.

Q But you went home and got the negatives and brought them back?

A Right.

Q What did you do with the negatives?

A Put them in that envelope.

Q What envelope?

A The one that Anthony had the pictures in.

Q All right, was that the same envelope you had delivered the pictures in?

A I don't remember.

Q Do you deliver pictures in an envelope that doesn't have you monogram on it?

(93) A No, sir, I don't.

Q And when you delivered the photographs to your client were they in you Christopher's Studio envelope?

A Right.

Q When you got to Anthony's office were they in a Christopher's Studio envelope?

A No, I don't believe they were because that opened from the other way.

Q Yours open from the top and those open the other way?

A Yes, sir.

Q You then put the negatives in your brown manila envelope that Anthony had?

A Right.

Q What time of day was this?

A Afternoon, I believe. I believe if I am reconstructing this right the negatives got there that afternoon.

Q All right, what happened to that envelope next?

A Which envelope?

Q The one that had the pictures and the negatives in it?

A I brought it to Dave.

Q Was that envelope ever out of your sight?

(94) A No, not that I remember.

Q You brought it on to Mr. Kreager?

A Yes, sir.

Q Have you seen it since?

A Yeah.

Q When?

A Well, he had them on his desk.

Q When was the last time you saw them?

A Last week as well as I can remember.

Q All right, at the time you went home to pick up these negatives were they in their little 4x5 folder?

A Some of them were because Gary had put some of them in a discard file and I went and got all of them because I wanted all of them in there, even the ones we didn't bring, and I put them all together.

Q Did you ever change envelopes?

A I probably did. To answer it correctly, I don't remember.

Q Let's think back, Rolfe, did you relabel them?

A Oh, no, I didn't relabel anything.

Q Did you relabel an envelope?

A No, I did not relabel an envelope.

Q Say, for example, you had taken the pictures for (95) me, would my name still be on the envelope?

A Yeah.

Q Would the negatives still be in that envelope?

A I may have put them in another envelope, but I did not relabel anything.

Q So you had two envelopes instead of one?

A I may have so I could get them all together. I don't know if I did or not.

Q What did you do with the envelope with your client's name on it?

A I guess it is in our shop.

Q Do you still have it?

A I don't know. I will look and see.

Q So you took them out of your envelope with your client's name on it and put them in another envelope, is that your testimony?

A I may have and may not, because you have those negatives.

Q Did you bring them to Kreager in the same day that Gary brought them to you?

A Yes, sir.

Q So you did not take them out of the envelope that would have had Keith's name on it?

(96) A No, sir.

Q Then in truth, Rolfe, the envelope that contained the negatives did not have your name on it either, did it?

A I didn't -- I don't know. I did not go to the shop and look.

Q You never did ever write your client's name on the envelope?

A I'm sure it was written on it, Bob. I'm almost positive the client's name was on it.

Q Didn't you change envelope, Rolfe?

A I may have.

Q And write somebody else's name on it?

A Oh, no, I don't believe I wrote anybody's else's name on that envelope.

MR. KREAGER:

If you have it, let him look at it.

A I don't have the one with the client's name on it. Is Anthony's name on it?

Q Do you specifically remember putting your client's name on it?

A No, I didn't do that. Whoever sorts the negatives does it. Gary could have done it. Does that answer the question?

Q I guess.

A I don't remember putting anybody else's name on it (97) unless -- I didn't put anybody else's name on it.

Q What was the purpose of these back-up photographs?

A No certain reason at all -- no certain reason at all except I just made black and white while I was up there.

Q Are you uncertain of the mode of the processing?

A Yes, sir, sometimes if something goes aflow I would have the black and white.

Q What could go aflow?

A Well, processing and not getting good reproduction. It is to back yourself up.

Q Did you look at the negatives of the films that were taken?

A Yeah, I personally looked at them.

Q Did you look at the prints?

A Yeah.

Q Now the ones you saw were taken from the air?

A Yeah.

Q Now you are acquainted with the KCS railroad that runs by this area where the photographs were taken?

A Yes, sure.

Q In your opinion could you have shot the same things by taking an aerial photograph of that railroad right-of-way?

A Not the same things. It would be a different per- (98) spective, as you well know.

Q You know where the Sabine-Neches ship channel is?

A Yes, sir.

Q Could you have taken photographs of a passing ship and shot the same design?

A No, it would be a different perspective.

Q What would be a different perspective?

A Well, from the ship channel it would be this way, and from a box car it would be this way.

MR. KREAGER:

She can't put down what you are waving with your hands, you would have to describe it please.

Q Would you have depicted the same items?

A Yes, sir, I would have depicted the same items.

Q All the same items?

A No.

Q What would be shown different about the ship channel?

A Well, it is a different perspective.

MR. KREAGER:

Don't use your hands.

Q All right, Rolfe, can you show the same pieces of machinery at the ship channel that you can --

A Not if they are blocked you can't. If it wasn't blocked by something you could.

(99) Q What is the nearest bridge to this area?

A That hump coming from down that interchange at Broussard's Curve.

Q How far is that from this side?

A About a mile or a mile-and-a-half.

Q Is it your testimony you could have shown the same thing at Broussard's Curve that you did from these aerial photographs?

A No. Up looking down you can show much better from an aerial view.

Q But you cannot show the interior structure?

A If it is being blocked by some other unit you can't, that's right.

Q In your opinion could you have shown as much detail of this DuPont plant from the ship channel as you showed on these aerial photographs?

A Not the interior, no.

Q Could you have shown as much from the KCS railroad.

A From the side you could.

Q No, taking the entire set of photographs you took, could you have shown that much from the railroad?

A No, sir.

Q Could you have shown it from the highway?

(100) A No, not the perspective.

Q Could you have shown it from the ship channel?

A No, not the perspective.

MR. KREAGER:

He said the detail. Listen to his question.

A Detail of what?

Q Detail of the entire area. I asked you to take the construction area just like this man asked you to do.

A Right.

Q So that I can show what the status of the area under construction is.

A Right, right.

Q Now can I see more from the air or can I see more from the ship channel?

A You can see more from the air.

Q Can I see more from the air or from the railroad right-of-way?

A You can see more from the air.

Q Can I see more from the air or from the highway bridge?

A The air.

Q The same would be true of the San Jacinto building or the courthouse or any other place?

A Right.

(101) Q I could see more flying over the area than I could from a flat plane?

A Right.

Q I come back to the question again, other than, or besides the fact that your client does not want his name disclosed, you have no reason for not doing so?

A No, sir.

Q And if he would authorize it you would give it in a minute?

A Yes, sir.

Q Have you received any money from your client?

A No, sir.

Q Since March 19?

A No, sir.

Q Has he agreed to pay you any money?

A No, sir.

Q Has he offered to pay you any money?

A I guess he is going to pay me. I hope he does.

Q Has he offered to bear any expense pertaining to this litigation?

A Yes, sir.

Q How much did he suggest?

A He didn't say.

(102) Q Did he offer to pay it all or just a portion of it?

A He said he would take care of the expense.

Q Did he advance you any money to pay for your attorney?

A No, sir.

Q He just agreed to reimburse you?

A He just said he would take care of it.

Q Did he say how much, and I am not asking you how much money you paid Mr. Kreager, whatever it was, it wasn't enough.

MR. KREAGER:

Right.

Q Did he say he would pay a note or how did he mention about it?

A No, he just said he would take care of it.

Q Did he say how he would take care of it?

A No, and I conveyed that to my attorney, Dave.

Q Did you tell your client how much it would be to take care of Mr. Kreager?

A No, I didn't.

Q Did you discuss it with him?

A I discussed it with Mr. Kreager and he said okay.

Q How about your client?

(103) A No, he just said he would take care of it, and I thought that was enough conversation and Mr. Kreager said okay.

Q Do you know whether "he has taken care of it or not"?

A I don't know whether he has or not.

Q He hasn't taken care of you yet?

A No, sir, he hasn't paid me anything yet.

Q Do you know what process is being developed out there or what construction area that is?

A Not until I read it in your petition.

Q Did your client discuss with you what it was?

A No, sir.

Q Is you client in the construction business, so far as you know and believe?

A I refuse to answer.

Q Is he in the engineering business, so far as you know and believe?

A I refuse to answer.

Q Is he a financial anaylst, so far as you know and believe?

A I refuse to answer.

Q Is he an attorney?

(104) A I refuse to answer.

Q Is your client a public agency?

A I refuse to answer.

Q Is this a city or county of Texas or drainage district or some other public --

A I refuse to answer.

Q Does the client operate in an assumed name or in his own name?

A I refuse to answer.

Q Is he a corporation or an individual?

A I refuse to answer.

Q Who else has seen these pictures sofar as you know and believe?

A I don't know.

Q What instructions did you give to Gary?

A To who?

Q To Gary?

A I told him to shoot the pictures.

Q Did you tell him what to shoot?

A New construction at DuPont.

Q Did you give him the perimeter diagram?

A I told him to shoot new construction. I drew it out just roughly and put the railroad tracks here and just shoot (105) them.

Q Did you tell him the north end of the plant?

A Yes, sir, I told him the north end of the plant.

Q And shoot the new construction, did you tell him about whether or not he should fly over the DuPont construction proper?

A No, sir.

Q Did you tell him who had hired you?

A Yes.

Q You told him?

A Yes.

MR. KREAGER:

Did you tell him or did you not tell him?

A Yes, sir, I told him the name of the man. He didn't know the man.

MR. KREAGER:

Good enough.

Q You did tell Gary?

A The name. Gary doesn't know the man.

Q When did you tell him the name?

A Oh, I don't know. I am sure I told him before he flew.

Q Have you discussed it with him since?

A Yeah.

Q The man's name?

(106) A Yeah.

Q What besides the area under construction, or what did you take to be the area under construction?

A That's not hard to tell when you are flying on new construction. You see the booms there and no smoke coming out.

Q In your opinion could you describe the heights at which these photographs were taken from?

A No.

Q You don't have any idea?

A No.

Q Have you used this camera many times?

A Oh, yeah.

Q The same type of film?

A Yeah.

Q And have developed literally hundreds of pictures from it?

A Right.

Q You can't tell me whether it was 500 feet or 5,000 feet?

A It wasn't 500 feet, heck no.

Q Less than 1,000 feet?

A Somewhere around 1,000 I would say.

(107) Q Would you quarrel with the figure 500?

A I don't know. It would be purely speculation with me.

Q What about the area not under construction, were you advised to take that as well?

A No, just the construction.

Q Did you interpret the construction area to also mean the area where they store equipment or materials preparatory to using it?

A No, that wasn't even discussed, the construction area.

Q The construction area, now Rolfe, I am a little bit unclear about one thing.

A All right.

Q I am a little unclear about these discussions you had with this man, you said they were several days to a couple of weeks prior to March 19.

A Uh-huh.

Q Is that right?

A Yeah.

Q Did he tell you when he wanted these pictures taken?

A No.

Q Could you have waited until September and taken them?

(108) A I always get a job done as quick as possible, but he didn't give me any date.

Q Why did you wait several days before taking them?

A Good weather.

Q You were waiting on good weather?

A Yes.

Q Did the man tell you anything about the time of day?

A No.

Q Or the day of the week?

A No.

Q Did he tell you he needed them before a certain period of time?

A No, sir.

Q Or he did need them in a hurry, what was you conversation with respect to needs?

A I told him I would take them when the weather conditions warranted and he said okay.

Q Did he at that time discuss with you whether he had permission from DuPont?

A No, sir.

Q Did you ask him whether or not he had permission from DuPont?

(109) A No.

Q Did you obtain permission?

A From DuPont?

Q Yes?

A No.

Q Did you instruct someone to obtain permission?

A No.

Q Have you ever taken aerial photographs of this construction prior to March 19?

A I am sure I have photographed the area job different times.

Q But the area of construction itself?

A No.

Q Do you know of anyone who has?

A No.

Q Have you ever seen any aerial photographs of this construction other than those you took?

A No.

Q Did Wayne Gregory know you all had flown it before?

A No, I didn't know Wayne Gregory.

Q Have you taken any photographs of area of construction since March 19?

A No.

(110) Q Have you seen any photographs that anyone else took?

A No.

Q Did you serve a copy of the restraining order on your client that Judge Fisher entered Thursday afternoon late?

A Yes, sir.

Q How many copies did you serve?

A One.

Q Did you serve a copy to the people to whom you had shown the photographs?

A I did not --

MR. KREAGER:

Pardon me, you mean everybody? For example, I saw them. I don't think you mean that.

Q I did mean it. Did you serve a copy?

A Me, I didn't show the photographs to anybody.

Q Did you serve a copy on the people to whom you delivered the photographs?

A Yeah.

Q You delivered them to this woman, didn't you?

A Yes, sir.

Q You didn't serve a copy of it on her?

A No.

Q Did you read the order before you served it?

(111) A Carefully.

Q Do you recall that it directed you to serve a copy on the people to whom you delivered the photographs?

A To whom, I thought that was the client.

Q So you just served one copy, huh?

A Yeah.

Q And that was on one individual?

A Yeah.

Q And that was not the woman to whom you had delivered the photographs?

A No, no.

Q All right, you didn't serve a copy on Mr. Brocato or Mr. Green or Mr. Weller?

A No.

Q I believe that's all for the moment.

CROSS EXAMINATION

BY MR. KREAGER:

Q Rolfe, do you of your own knowledge know what lens setting was used?

A No.

Q You were asked whether or not you could show the same deal from the river or from the highway or railroad track, from the overpass, is there any reason because of lenses that (112) you can't show more detail?

A When you are up in the air you can show one type detail and when you are on the ground you show another.

Q Talking about detail as opposed to perspective, you think obviously looking down from the air is a different plane or perspective than looking at something sideways?

A Right.

Q Or looking at something from an overpass?

A Right.

Q But so far as the details of what you are looking at --

A The details can be taken the same from the ground, the detail on any object that you can see.

Q Could you from the highway have photographed the same area in even greater detail using more powerful lenses?

A Well, there is where the word perspective comes in or you can show the side unit part here. You could show another perspective.

Q I am talking about detail.

A Okay, detail is the same from the air or from the ground.

Q The detail is the same, so could you actually show more detail from the ground with a more powerful lens?

(113) A Well, I think they were pretty good pictures.

Q Well, would you answer my question?

A Can I show more detail from the ground?

Q Yes, with a more powerful lens?

A Yes.

Q Could you take the photographs from the ground, these structures, with a lens, all that you can take is square foot at a time of a detail and then reconstruct the

entire print from the ground and taking it square foot by square foot?

A The side view, yes.

Q And from the overpass you could take an oblique, could you not?

A Yes.

Q And from the river could you or could you not?

A From the east side, yes.

Q How about from the railroad track?

A You could show the west side.

Q Would it be possible to take all sides of these structures from the ground in even greater detail than you took in the photographs in question, is that or is that not true?

A You could show the west side in good detail. Now you understand more or less the south, if I have my property line correct, you have no perspective.

(114) Q But the air doesn't show you the east, west, north or south, does it?

A No.

Q So when you say you were showing the details from the air that was not visible from the highway or from the river or from the railroad track or from the overpass, you are using the word detail in the sense that it is a good view?

A A good view, yeah.

Q But sofar as the details of the structure itself --

A You can get just as good details from any one way as the other showing detail.

Q All right, now is this aerial photographs of plants something that you have done only once in your life, or is this something that is done with some degree of regularity?

A I have done it many times.

Q Is this photographing of new construction from the air unique or something that you have done on many occasions?

A More or less routine.

Q Have you, in fact, taken photographs of the DuPont plant on other occasions?

A Yes, I have.

Q What are the facts as to whether or not the entire county, including all of these industries, has been mapped (115) from the air?

A I am sure it has been mapped a number of times.

Q Have you yourself made arrangements for this?

A Yeah, I made the aerial view over at the bank.

Q Does that aerial view include all the industries in the county?

A Yeah, I believe it does.

Q Does it include the DuPont plant?

A Yeah.

Q Where is that photograph presently hanging?

A Over in the community room of the First Security National Bank.

Q Who arranged for that photograph?

A John Gray.

Q What is his status or title?

A He is president of the bank.

Q Now sofar as identifying the number of photographs taken, what are the facts as to whether or not you delivered to me all of the negatives and all of the photographs that were ever in your possession?

A Yeah.

Q Now who told you whom to serve with a restraining order?

(116) A Can I talk to you just a minute?

Q Surely.

(At this point Mr. Kreager and the witness left the room for a short conference).

Q All right, tell me how you handled the delivery, first, what attorney advised you how to do that?

A Mr. Tucker.

Q Mr. John Tucker?

A Yeah, he said, "take this and carry it all to your

client" and I did that.

Q At that time was this secretary in the presence of your client?

A Well, she was in the room.

Q All right, was she there present?

A Yeah.

Q As to other aerials that you have done, have you photographed the Mobil plant?

A Yes.

Q The Gulf plant?

A Yes, sir.

Q Texaco?

A Yes.

Q Jefferson Chemical?

(117) A Yes, sir, I am sure I have, Dave, over a period of ten or fifteen years, I'm sure that I have.

Q How about highway construction?

A Yes, sir.

Q Have you done this for attorneys?

A Yeah.

Q Have you done it for the Highway Department?

A The highway, no, I don't believe I have ever done it for them.

Q What is the situation insofar as your relationship with your clients, for example, an attorney asked you

to take a photograph, are you free to discuss the name of the attorney and what you photographed to someone else?

A If he permitted me to.

Q What if he does not?

A No, no.

Q Does this have any -- this loyalty of yours to your client have any relationship to the prosperity of your business?

A Sure.

Q Will you explain that, why?

A Well, I work for developers, real estate men, insurance adjustors, lawyers and others, and I just keep the (118) matter secure on a basis like that. Of course, if I even thought it was some matter that wasn't public, I would certainly keep it, and I do. I don't ever promiscuously show them around.

Q What about weddings?

A No, I don't even show weddings, and they like to show those, and I hardly ever show a wedding. I wouldn't be as secure about it as I would some work for you.

Q Does this have some direct connection you feel, or does it not with the prosperity of your business?

A Sure, I don't think people would be using me if I just promiscuously went around showing work that I did for them.

Q What about discussing what you did it for, or who you did it for?

A I don't.

Q You don't what?

A I don't go around telling who I did the work for.

Q Do you have a policy directly connected with the prosperity of your business denying them that they be shown?

A Yes, sir.

Q What about the newspapers, will you give it to the newspapers?

A No.

Q What type of fence is there along the highway?

(119) A I don't believe there is a fence along the highway. You mean the highway going to Nederland?

Q Along the DuPont plant, the area of the construction?

A I think it is a regular cyclone fence.

Q Does that prevent you from taking photographs through it?

A No.

Q What are the facts as to whether you could or could not use a high-powered lens showing extremely more detail or not through that cyclone fence?

A Yes, you could.

Q What about you?

A You would have to go above because the fence would be between you.

Q Can you shoot between the rings in the chain of fence?

A Yes, you can, right.

Q How many years of experience do you have in this aerial photography?

A Thirty.

Q Where did you receive your first training?

A Well, I made pictures before I even went to war, but I went to the photography school.

(120) Q Tell us about it.

A The Navy Photography School in Pensacola, Florida.

Q Did you take training at that time in taking aerial photographs?

A Yes, sir.

Q And you have been a professional photographer for how many years?

A I have been a professional photographer for 33 years.

Q And you have your own shop?

A Yes, sir.

Q And that is located where?

A 670 Zavalla Street, Beaumont.

Q What are the facts as to whether you were familiar with any internal rules or regulations with respect to photographing inside the DuPont plant?

A I had no knowledge of aerial photographs, I never been in trouble or anything in taking aerial photographs.

Q My question is, and listen to my question, what are the facts as to whether you were familiar with any DuPont rules, regulations or restrictions internal to their procedure over there with respect to taking photographs?

A None, no.

Q What are the facts as to whether you had any (121) knowledge of any so called trade secrets or secrets of any type on the DuPont property?

A None.

Q None what?

A I had no knowledge of any trade secrets of DuPont.

Q That's all I have.

REDIRECT EXAMINATION

BY MR. KEITH:

Q Rolfe, do you testify that the only construction where you were commissioned to photograph on March 19 appears in the photograph in the First Security National Bank?

A No, not at DuPont.

Q At what altitude were those photographs taken?

A I don't know.

Q Considerably higher than 500 feet?

A I would say yes.

Q Who took them?

A I believe International Map and Service Company in San Antonio.

Q They certainly do not show the new construction that you depict in your photographs, is that right?

A No, they don't.

Q Have you ever taken photographs of new construction (122) at DuPont before?

A Not that I remember.

Q This telephoto lens Mr. Kreager asked you about, its object is to do what?

A Detail.

Q You could do that in your aerial mission as well as standing on the ground.

A Yes, sir.

Q It would accomplish as much in the air as on the ground, that is, it would show more detail?

A Yes, sir.

Q Is it your testimony all of the new construction visible on March 19 would be visible if taken on the ground?

A I didn't testify to that.

Q It is not correct?

A No, I did not testify to that.

Q There are some structures in your photographs of March 19 that you could not photograph from the ground, isn't that correct?

A Yes, sir.

Q Did you ever inquire as to whether or not there was any regulations about part of the DuPont plant?

A No.

(123) Q Have you gone out there and been asked whether or not you had a camera?

A No, I have taken pictures several times in the plant.

Q How many times?

A Oh, I don't know.

Q Has it been for outside or inside people?

A I don't know. Directly I guess someone that worked in there.

Q I believe that's all. Rolfe, you indicated in response to Mr. Kreager's questions you had taken pictures of Texaco, Mobil, Gulf and Jefferson Chemical and other manufacturing plants in this area, have you done so for people not employed by such firms?

A I don't remember. This is over a period of years.

Q Let's go back for the past three years, that's a reasonable time for a man's memory, have you taken pictures of Mobil's installation from the air?

A Yes, sir.

Q For a non Mobil person?

A I easily could have.

Q Where you were told to carve out a particular area of new construction and photograph that?

(124) A Not that I remember.

Q Or for any other industrial manufacturing concern?

A Not that I remember definitely, no.

Q Well, that's what you were requested to do here was by a non-DuPont man, and carved out a certain part of new construction, were you not?

A Well, my client.

Q Sofar as you know was he a regular employee of DuPont?

A I refuse to answer.

Q Do you claim he was a regular employee of DuPont?

A I don't know.

Q Did you ask him?

A No.

Q If he is a regular employee -- put it this way, assume for the purposes of my question he is, would that

have been the first instance in the last two years where you carved out new construction to photograph new construction from the air?

A You are really getting me down to a gnat's eye.

Q I understand I am.

A I was taking new construction.

Q Were you ever requested by anyone else other than company men to do it at Mobil, Texas or Gulf in the last three (125) years?

A Not that I specifically remember.

Q All right, that's all.

RECROSS EXAMINATION

BY MR. KREAGER:

Q Rolfe, would you please think back, I happen to recall my own personal knowledge that you took photographs of some of those industries when we had a nuisance case out there, and I didn't represent those people, so you were taking them for a --

A Yeah.

Q Let's get your answer straight. Have you taken them for attorneys?

A I have taken them for attorneys, developers, and real estate men, and just about anybody.

Q Were they non-employees that you were taking them for?

A Yes, sir, right.

Q Has that been in the last three years?

A Yeah, Dave, right, I'm sorry.

Q You left him with the impression that you hadn't taken them for 3 years.

MR. KEITH:

He didn't leave me with that impression, that's what (126) he testified to.

Q Straighten it up, will you?

A Yes, I have, that's right.

Q That's all.

FURTHER REDIRECT EXAMINATION

BY MR. KEITH:

Q Who and when and specifically for an attorney?

A Well, I can remember pictures I made of Texas Company for an attorney just a few weeks ago.

Q An area of new construction?

A I didn't see any new construction.

Q Now when else have you taken pictures of new construction?

A I don't know, Bob.

Q Do you say now that there have been instances?

A There could have been -- there could have been.

Q I want to know when it was?

A I don't know. We take so many photographs.

Q You are saying that there could have been but you're not saying there was, is that correct?

A No, I'm saying it easily could have been.

Q But you don't recall the instance?

A No, I don't.

(127) Q That's all.

MR. KREAGER:

That's all.

CLOSE OF THE DEPOSITION

* * * * *

..oo00oo..

PORTIONS OF DEPOSITION
OF GARY WESLEY CHRISTOPHER

(Number and Title Omitted) (Filed: May 14, 1969)

* * * * *

(3) GARY WESLEY CHRISTOPHER,

having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. KEITH:

Q Your name is Gary Wesley Christopher?

A Correct.

Q How old a man are you, sir?

A Twenty-two.

Q You know my name is Keith, and I practice law in Beaumont and have sued you on behalf of duPont?

A That's right.

Q You were here some considerable time this morning while your father was testifying?

A Yes, sir.

Q You have testified once or twice before in court, have you ever given your deposition?

A No, sir.

Q How many times have you testified in court?

A Twice.

Q I am going to ask you some questions, some of which you may know the answer and some of which you may not, and if you don't know the answer to any question, don't try to guess, and as you know you may consult with Mr. Kreager at any time (4) and you may excuse yourself and confer in private.

A All right, sir.

Q But don't try to guess at my questions, okay?

A Right.

Q You took photographs of duPont's Beaumont works on March 19, 1969, is that right?

A True.

Q How many photographs did you take?

A I do not know.

Q How many photographs were you instructed to take?

A No certain amount.

Q What were your instructions?

A My instructions were to shoot the new construction area as was drawn on a crude sketch, shoot the new construction area.

Q So as to show what?

A As to show the construction area, simply just to show it.

Q Who drew the sketch?

A Rolfe.

Q And what were the boundries of the area you were instructed to photograph?

A The boundries were north of the main duPont plant (5) adjacent to the KCS tracks, and since I was familiar with the area that's what I went by was the crude drawing.

Q All right, for our purposes the KCS tracks run which direction?

A Would run north and south.

Q All right, north would be toward Beaumont and south would be which way?

A South would be toward Port Arthur.

Q All right, now the duPont plant would lie east and west of those tracks?

A It would lie east.

Q Now the area you were concerned in photographing, did it lay east and west of the tracks?

A It lay east of the tracks.

Q And north of the main plant, did you say?

A Yes, sir, generally.

Q All right, how many photographs did you take?

A Around 16.

Q Is there any way for you to ascertain the number that you actually took by counting film or counting cuts?

A Yes, sir.

Q How would you do that?

A By reviewing the negatives that have been turned over to you, I believe.

(6) Q Well, what if I just showed you 14, what would that mean?

A By air retrace, but reviewing them previously I could retrace it and know how many I took.

Q What do you mean by retrace, could you tell me where you were each time you shot a photograph?

A No, sir.

Q Well, how would you retrace it?

A Well, by the records that I have kept.

Q Where are those records?

A The records that I have kept are receipts of films, processing --

Q Do you have those records with you?

A No, sir.

Q During the course of your father's deposition you obtained some records or some information from records?

A Yes, sir.

Q What information did you obtain?

A The information I obtained were receipts from Majestic, both on our color and all our black and white. We don't keep any records on our black and white. I know that all the negatives that I have taken are in your possession.

Q You don't know that, do you Gary?

(7) A No, I mean they are not in my possession, not in my possession.

Q All you know is you don't have them?

A That's right.

Q How many I have got, you don't know?

A That's right.

Q So you can't tell me whether I have got all the ones that you took or not?

A That's right.

Q Now did somebody bring you some records from your office?

A Yes, sir.

Q May I see those records?

A I don't have them with me.

Q Where are they?

A I don't know.

Q Did you review them before your deposition here this afternoon?

A Yes, sir.

Q In Mr. Kreager's office?

A Yes, sir.

Q All right, I would now ask that I be given an opportunity to look at the records that you reviewed. Dave,

* * * * *

(23) Q All right, you had nine 8x10 color and six black and white?

A Yes, sir.

Q What shape were they?

MR. KREAGER:

Bob, do you have the photographs?

Q Dave, I have him under cross-examination.

MR. KREAGER:

Well, the photographs have been given you. Now he has continually told you if he has the photographs that would be helpful. They are not your property more than anyone else's property. Give him the photographs back and he will tell you. Will you give him the photographs?

Q I will give them to him in due time. He is under cross-examination. If you feel like I have abused him I

want you to step in and tell me.

MR. KREAGER:

If you will let him see the photographs I think he can give you a better answer, and he has asked for them.

Q What size were the black and white?

A The black and white were 11x14 and 8x10.

Q Both?

A Yes, sir.

Q As I understand, you had nothing to do with developing or printing the color?

A That is correct.

(24) Q Did you develop or print the black and white?

A No, sir.

Q Who did?

A Ted.

Q Who determined whether they would be 8x10 or 11x14?

A Ted.

Q What factors motivated you to print one 8x10 and another 11x14, why would you do that had you developed these?

A Had I developed them I would chose the best exposure, that is photographically, and printed those 11x14

and the others would go 8x10.

Q Photographically it would show what?

A It would show the areas I was trying to get.

Q What would it show, would it show more structures, more detail or more close area?

A I can just -- it would show more of the unit that I was shooting.

Q Now you selected or you were instructed to photograph a particular area, is that right?

A Yes, sir.

Q All right, now were you told then to take them in color or black and white or both?

A To my knowledge I was instructed to take them in (25) both.

Q All right, who gave you these instructions?

A Rolfe.

Q Oral or written?

A Oral.

Q On what date?

A I do not know.

Q Was it the same day that you took the pictures?

A No, sir.

Q Was it obviously an earlier date?

A Yes, sir.

Q How many days in rough term?

A I can estimate in a week.

Q Did he tell you when to take them?

A No, sir.

Q Did he tell you what time of day to take them?

A No, sir.

Q What were his instructions to you, the best you can recall?

A Well, his instructions, as I have stated, is to shoot this new construction on a good day, to my knowledge, would be the best day and most convenient for me, and so far as the weather goes just the best photography day, that was his only (26) instructions.

Q All right, what weather would be best for aerial photography?

A It would be clear, not cloudy and sun -- well, not necessarily sun.

Q What time of day?

A Between 10 and 2.

Q Did he tell you to take aerials or from the ground?

A To take aerials.

Q Did he tell you at that time whome you were taking the photographs?

A No, sir.

Q When did you learn for whom?

A It was after receiving the photographs, and to my knowledge -- I take that back, he could have told me at the time he instructed me to shoot these who we were shooting them for.

Q All right, when do you remember that you first learned the name or heard the name?

A I don't recall exactly when but it could have been at the time of instruction or it could have been after reviewing the negatives or reviewing the prints, I don't remember exactly.

Q All right, now who engaged the aircraft?

A Christopher's Studio.

(27) Q Did you personally attend to that?

A Yes, sir.

Q Who did you call?

A I called the Beaumont Municipal Airport.

Q Did you ask for a particular pilot?

A No, sir.

Q When did you make your arrangements?

A The day I flew which was the 19th.

Q An hour or so before hand?

A Earlier in the morning.

Q All right, did they tell you who the pilot would be?

A No, sir.

Q Did you tell them what time you would be there?

A Yes, sir.

Q What time did you engage the plane for?

A To my knowledge it was around noon.

Q And now who was the pilot who took you up?

A His first name is Wayne -- Wayne Gregory.

Q What kind of plane did you fly?

A I only know it by they call it the Cub.

Q All right, what color is it?

A It is yellow.

(28) Q Is it the only one like that out at Beaumont Municipal?

A I don't know.

Q Have you flown in it a number of times before?

A Yes, sir.

Q How many passengers will it accommodate?

A Two -- the pilot and me.

Q All right, two people?

A Yes, sir.

Q Now what other instructions did your father give you other than to take this northwest corner of duPont plant under construction?

A No other instructions.

Q Did he give you any instructions about the altitude?

A No, sir.

Q The color film or type of film?

A No, sir.

Q What type of lens were you using?

A I don't know the type of lens.

Q Did you use the camera for other than aerial photography?

A No, sir.

Q You took it with what type of film, the black and white?

(29) A The black and white, the brand name is Royal Pan, 4x5.

Q All right, who filled the holders with these cuts?

A Either Ted or I. It is hard to determine.

Q You just have a supply of these on hand?

A That is correct. We fill them as needed.

Q So when you get ready to take some pictures you don't have to fill them and cut them?

A Yes, sir.

Q They are already cut, I guess?

A That's right.

Q How many film exposures did you take with you on that particular day?

A I don't know.

Q How many would you have ordinarily taken?

A Well, on that particular occasion?

Q Yes, sir.

A I took 20 exposures in color, and black and white I took most probably 40 of 4x5 cuts.

Q So you could have taken as many as 60 pictures, roughly?

A Yes, sir, that is correct.

Q Did you have just the one camera?

(30) A Yes, sir.

Q Did you have to change anything when you changed from black and white to color?

A No, sir, only the holder.

Q But you have to do that every other color picture?

A That's right, twice, shoot 2 each color.

Q Now was Gregory there when you arrived at the airport?

A Yes, sir.

Q Did you mention to anyone what you were going to do.

A Yes, sir.

Q Who did you mention something to?

A To my knowledge Mr. Sheffield.

Q How did that come about?

A I think he asked us where we were going.

Q He does that each time, doesn't he?

A Most of the time, yes, sir.

Q And what did you tell him?

A I told him we were going to shoot duPont.

Q Did you say we were going to shoot duPont or shoot for duPont?

A I don't remember.

(31) Q All right, at that time did you believe that you were shooting for duPont?

A No, sir.

Q Now what instructions did you give Mr. Gregory?

A Well, no prior instructions before we actually left the ground. In other words, he knew where duPont was, and I knew where it was, and that's were we headed.

Q All right, and what route did you follow?

A Direct as we could, straight.

Q You just went across the north side of Beaumont and across the city dump to the river?

A No, sir.

Q What route did you follow?

A First we would cross highway 90 and then toward Cardinal Drive and down that way.

Q All right, so you came to duPont from the west?

A Yes, sir, from the west.

A All right, did you circle the plant at any time

before you took the pictures?

A Yes, sir.

Q How many times did you circle?

A I don't know.

Q The purpose being what?

(32) A Just to view.

Q Just to see what you were going to photograph?

A Yes, sir, that is correct.

Q So you could judge what you needed to take, I guess?

A That's right.

Q All right, were you riding in the front seat or the back seat, so to speak?

A In front.

Q He was operating it from the back?

A Yes, sir.

Q All right, this Piper Cub has a door on the right hand side?

A That is correct.

Q And do you take photographs with that door open or closed?

A Well, I don't believe it has a door. It does have a flap there and the flap is down, it is as open as we could get it.

Q That's my point, you didn't take them through a

window, you took them through a door.

A Yes, sir, through the flap.

Q You took the photographs out the right hand side (33) of the plane?

A Yes, sir.

Q Is that the only side?

A Yes, sir.

Q Did you make any efforts to secure authority from either duPont or any public agency before you began this mission?

A No, sir, not I.

Q Did the pilot of the plane that you heard?

A Not to my knowledge.

Q When did you tell him you were going to shoot duPont, as you got ready to leave?

A Yes, sir, as we were taking off.

Q Did he radio anywhere and get authority, so to speak?

A No, sir.

Q Did you hear any such conversation?

A No, sir.

Q Who determined the altitude you were going to fly?

A Well, indirectly I did.

Q All right, how did you go about setting it?

A By hand movement. That's the way I directed him, by my hand.

Q All right, did you tell him to either go up or down?

(34) A That is correct. If I raised my hand he would respond, and if I lowered it he would lower it.

Q Why did you change the altitude, Gary?

A Just positioning myself for a particular shot or a particular angle.

Q Now what do you consider the general boundries of the duPont plant, you talked about you were north of the main plant?

A Yes, sir.

Q What do you consider the boundries of the main plant?

A Of the part I was shooting?

Q No, just the duPont plant.

A Well, I would have to look at a photograph or a map. I really couldn't say the boundries of the over-all plant.

Q All right, what about the river, does it lay on one side?

A Yes, sir, I believe so. It is not necessarily in a parallel line with the railroad tracks but seems like there is a reservoir and the river on the east side.

Q All right, and the railroad tracks is basically on the west side?

A Yes, sir, a boundry on the west.

(35) Q Is there any industrial installation on the south side?

A I don't recall if there is any.

Q What about the north side?

A I don't believe so.

Q All right, did you all fly over the duPont plant itself in taking the photographs?

A Not to my knowledge.

Q Did you intentionally try to stay off of the Dupont plant.

A No, sir -- no, sir.

Q Did you fly in the area between the river and the railroad?

A Yes, sir.

Q Did you fly south of the area of construction between the river and the railroad?

A Let's see, south of the area of construction -- do you want to rephrase that?

Q You have the river on the east side.

A That's right.

Q And the railroad on the west.

A Okay.

Q And the area of construction would be what you (36) would call the northwest corner of the plant.

A Right, sir.

Q Did you fly south of the construction and between the river and the railroad?

A If I am not mistaken we have a parking lot here, is that correct, and what is that?

Q I just drew that -- did you fly over the parking lot, for instance?

A Yes, sir, I could have.

Q Do you know where the main administration building of the duPont plant is?

A No, sir, I don't.

Q You came in from the west?

A Yes, sir.

Q Did he make 2 or 3 circles around to get the bearings?

A Yes, sir.

Q You would have circled crosswise?

A Yes, sir.

Q And you would be looking out the righthand side?

A Yes, sir, that is correct.

Q Did you raise or lower your altitude after you started circling and before you started photographing?

(37) A I believe we started shooting after I had circled a couple of times, maybe twice.

Q All right, what altitude did you shoot from?

A I don't know.

Q Do you have any idea?

A I could calculate it.

Q How could you calculate it?

A From best knowledge.

Q What would you calculate it to be?

A Around 1,000 feet.

Q Was it any lower than 1,000 feet?

A This was my calculation, would be 1,000 feet.

Q I want to know what factors went into that calculation?

A Well, from previously shooting areas, either knowing or hearing how high I was or knowing exactly how high I was.

Q Was there an altimeter on this plane?

A I believe so.

Q Did you ask the man how high he was flying?

A No, sir.

Q Was there any large what you and I might call smoke stacks sticking up in the air out there?

(38) A I don't believe so.

Q Any large towers that would stick up in the air?

A Yes.

Q Would you estimate the height of some of those towers?

A An estimate I would say it would be between 100 and 300 feet.

Q How high above those towers did you fly?

A Well, from my estimate of a thousand feet.

Q You would just deduce and say 900 or 700 feet above them.

A Yes, sir.

Q What speed did you fly?

A I don't know.

Q That again would be just an estimate?

A Yes, sir. Do you want me to estimate how fast the speed?

Q Yes, sir, if you can.

A I am sure we flew between 70 and 100 miles an hour, possibly slower at times, I don't know.

Q All right, did Gregory ever tell you what your altitude was?

A No, sir.

(39) Q Did you ever ask him?

A No, sir.

Q Is it your testimony that you did or did not fly over what you consider to be the duPont plant proper?

A Any of their property?

Q The plant that exists out there that you consider to be a part of their plant.

MR. KREAGER:

Are you distinguishing land as opposed to structure?

Q I am talking about what we would ordinarily call the refinery.

A Yes, sir, I could have flown over their property while taking these photographs.

Q All right, and by their property we are talking about where there would be buildings, towers or pipeline.

A Crossing to the parking lot, yes, sir, that would be their property, yes, sir.

Q What time did you arrive at the plant proper?

A I don't know exactly.

Q Do you have any data that you could refer to that would refresh your memory?

A No, sir, other than if I engage this plane at noon, it would be shortly after that.

Q All right, you flew straight out there?

(40) A Yes, sir, from the airport to the duPont plant.

Q Did you fly straight back?

A No, sir.

Q Where did you go?

A I shot photographs of Interstate Loop 251 and the Fannett Road.

Q How many photographs did you shoot of that area?

A I shot 5, I believe.

Q How long did that take?

A It took around 15 minutes at the most, maybe 10 -- 10 or 15 minutes.

Q Did you take these coming or going?

A That would be coming back.

Q After you had shot duPont?

A Yes, sir, after I had shot duPont.

Q What were you trying to show by your photographs?

A Of this --

Q duPont?

A Just the area which I described as construction area, the construction unit.

Q What about the construction unit, were you trying to show its true condition as it existed on the ground, is that a fair statement?

(41) A Yes, sir, that would be a start.

Q Were you trying to locate any particular item within that area?

A No, sir.

Q Such as a pipe or a stack or anything else?

A No, sir.

Q Were you trying to show anything with particular clarity?

A No, sir, everything I shot with clarity with nothing in particular.

Q All right, you were just trying to show the conditions as they existed on the grounds?

A Yes, sir, of this unit, no separation or part of the unit or anything.

Q All right, you did not develop the films yourself?

A No, sir, black and white or color.

Q Either one?

A No, sir, not to my knowledge.

Q When did you see them first?

A The color would have been the following day and the black and white the same, early in the morning.

Q All right, is it your testimony as to this \$27.00 invoice number 15366, if you got that on March 21, that would (42) have been the color pictures themselves?

A Yes, sir, I believe so.

Q And that's two days after you had shot the film?

A That is correct, by this date, it would be two days after it. The 21st, is that correct?

Q Yes, sir, and that's the date you actually got

the pictures themselves?

A Yes, sir, if this date is the date I picked them up, and I didn't check it at the time, but if that date is correct it would have been the 21st which would have been two days after.

Q All right, did you label personally these pictures in any way?

A The actual finished photographs?

Q Yes.

A I don't believe so, not to my knowledge.

Q When was the last time you think you saw them, Gary?

A It was in Mr. Kreager's office.

Q When was that?

A Seems like about a week or a week-and-a-half ago from today.

Q Is that the same day you went to federal court (43) or was it before you went to federal court?

A No, sir, it was before so it was before the 14th, was that the date?

Q Yeah.

A So it was before.

Q Do you think you would recognize the pictures if I showed them to you?

A Yes, sir.

Q I show you what looks like a stack of them, you better count them and see how many there are.

A Yeah, I did mark them.

Q How many of them are there?

A This is nine.

Q Do you see a mark that you placed on those photographs?

A Yes, sir, I did write this.

Q They are numbered 1 through 9?

A That is correct.

Q Did you put that mark on there?

A Sir?

Q Is that in your handwriting?

A Yes, sir.

Q And it is 9 of the photographs that you took of (44) the duPont plant on March 19, 1969?

A That is correct.

Q I see another identifying mark on the right hand corner, did you place that on there?

A No, sir.

Q Do you know who did?

A No, sir.

Q Was it there at the time you gave the pictures to Mr. Kreager or when you saw them in his office?

A I did not look, I never looked at the back of

the photographs.

Q Look at those nine I have showed you marked 1 through 9 and tell me if those are all the color prints you have even seen of that plant.

A To my knowledge it is.

Q You haven't even looked at the picture side, you are just looking at the back side.

A To my knowledge I took 9, and this is the finished product.

MR. KREAGER:

Gary, is this your handwriting?

A Yes, sir.

MR. KREAGER:

Are you positive? Don't guess.

A To my knowledge it is.

(45) MR. KREAGER:

All right, turn them over and study them.

A All right.

Q I want you to look at those pictures and I want you to be sure you can testify those are the pictures of that plant.

A Yes, sir.

Q All right, those are the 9?

A Yes, sir.

Q Now were any black and white photographs made from

these to your knowledge, from these 9 color photos?

A No, sir.

Q The black and white were made from a different film?

A Yes, sir, that is correct.

Q It would be readily possible to make a black and white from these color films, would it not?

A Yes, sir.

Q You could do that in your plant?

A Yes, sir.

Q It would take you about 15 or 20 minutes?

A About.

Q You could get a clear print from these numbers?

A It wouldn't be as good a reproduction as you see (46) there but it would be a clear picture, yes.

Q Gary, look at color photograph number 3.

A All right, sir.

Q Let me get over here behind you.

A Okay.

Q You see what looks like the railroad?

A Yes, sir.

Q And at the top is what?

A The river.

Q What we call the Neches River?

A Yes, sir.

Q And the top would be the east side?

A Yes, sir.

Q And the bottom would be the west?

A That is correct.

Q And if we look then at the left side would be which direction?

A It would be north.

Q And the right side would be south?

A That is correct.

Q See this big white oval tank in photograph number 2, it has duPont and an oval on it, does it not?

A That is correct.

(47) Q Was that tank there on the day you took these pictures?

A Yes, sir.

Q All right, immediately west of that tank you see three silver looking smoke stacks of some kind, do you not?

A Yes, sir.

Q Did your aircraft fly between this tank and these smoke stacks?

A I could have, yes, sir.

Q And north of the tank you see what looks like a drainage ditch or canal?

A Yes, sir.

Q Did you fly between this canal and the roadway that runs from the west to the east shown in photograph 2?

A No, sir, I don't believe so.

Q Did you fly over the reservoir reflected here?

A Yes, sir, to my knowledge I did.

MR. KREAGER:

Saying to your knowledge does not allow you to guess.

A I didn't -- I never looked exactly what I was over, therefore I was interested in shooting this particular unit here. That was what I was going out to do and I never looked exactly what I was over.

(48) Q All right, how far from the unit that you were shooting did you start to position your camera, how far away were you shooting?

A I don't know.

Q You don't have any idea at all?

A Well, I've got an idea.

Q What is your idea.

A An estimate?

Q Yeah.

A In footage or yards?

Q I will convert it if you will give it to me.

A How far away from this unit would that be from

the edge of the road? See in this photograph, can we start with that one?

Q Let's just take these 3 silver smoke stacks, how far away were you?

A I would say 1,000 feet.

Q That's from the point of your camera straight to these --

A Yes, sir, straight to these.

Q On some photographs you were close to the object of your camera, were you not, let's take number 3, and tell me how far the lens of your camera was from the silver smoke stacks (49) shown on the top of the picture?

A Well, let's put it this way, I would say I was a couple of thousand feet from the silver stacks here.

Q You were 2,000 feet?

A I would say a couple of thousand.

MR. KREAGER:

Gary, do you have any idea really?

A No, there is no way for me to measure it.

Q What about photograph number 4?

A How far away was I from the silver stack?

Q Yes, sir.

MR. KREAGER:

You see you are testifying under oath to something, and if you can, and if you can't tell the man.

A He asked me to give him an estimate.

Q I want your very best estimate, you were out there and we weren't.

A How can I estimate?

Q That's one advantage a lawyer has, he doesn't ever take an oath.

A Well, if I estimated a couple of thousand feet, you know in some photographs I was closer than others.

Q That's precisely my point, and you know that. Concerning your distance to the three stacks in number 8, were you closer to the stacks in number 8 or were you closer to the (50) stacks in number 2?

A Yes, sir, I sure was, in number 8 I was closer.

Q How much closer were you?

A I don't know.

Q Do you think your height was 1,000 feet?

A I don't know.

Q You really don't know, do you?

A No, sir, I don't.

Q And actually, Gary, you can't testify whether you were 500 feet or a thousand or 1500 feet, can you?

A Not exactly.

Q And you can't testify whether you were 400 or 1100 or 700, can you?

A I can't testify exactly how close I was.

Q And you can't testify within 500 feet how close you were to any of these objects, can you?

A That is correct.

Q And you cannot testify under oath that you were lower than 500 feet simply because you don't know.

A That's right, I don't know how far or how low.

Q These photographs were all taken from the right side of the plane?

A Yes, sir.

(51) Q Did you take the color first or the black and white first?

A I don't remember.

Q Did you interchange them?

A No, sir, not to my knowledge.

Q Is it likely that you would have interchanged them?

A Not likely.

Q All right, I am showing you four -- are these 8x10's?

A That is correct, all of these are 8x10.

Q And 3 11x14's, black and whites, is that right?

A Right.

Q Look at those and see if you took them?

A All right, sir.

Q Did you take each of those?

A Yes, sir, to my knowledge.

Q Are you certain of that or do you just assume that you did?

A Well, I can only say to the best of my knowledge, yes, sir, I took every photograph that I have looked at.

Q All right, they have some writing on the back of them?

A Yes, sir.

(52) Q Did you put that on there?

A No, sir.

Q Whose writing does that appear to be, is it familiar to you?

A It looks like Ted's but I couldn't say.

Q All right, it is numbers 1 through 7?

A Yes, sir, that is correct.

Q All right, now what about this scratching down here on the right hand corner?

A I don't know.

Q You don't know who did that?

A No, sir.

Q All right, do each of these have that scratching on them?

A The bottom righthand corner?

Q The initial at the bottom right hand corner?

A That's right.

Q And those are the photographs that you took?

A Yes, sir.

Q Have you seen other photographs other than these 16 I have shown you?

A Other photographs --

Q Of this area that you took on March 19?

(53) A No, sir.

Q Did you take other pictures besides these 16?

A Yes, sir, I took 2 more color.

Q Two more color?

A Yes, sir.

Q All right, why didn't you develop them?

A Simply because I either duplicated a shot and there was no use printing them or it wasn't up to par.

Q It wasn't up to par?

A Either that or something else. I don't know the reason for it.

Q All right, now --

MR. KREAGER:

Could you look at the negatives and say?

A Yes, sir, if I saw the negatives I could tell if I made a duplicate of something.

Q Gary, do you think if we had a bigger print you could show us where you were when you took each shot?

A You mean a vertical map of some kind?

Q Yes, sir.

A No, sir, I could only estimate.

MR. KREAGER:

Could you estimate it for him, Gary?

A Yes, sir, if you give me a map of the duPont area I could probably estimate where I was when I took the pictures.

(54) Q Will this pencil write on a photograph?

A It probably won't on a glossy but it probably will on this kind.

Q Mark this P-1 for me and put the date on it (mark P-1, 4-22-69, OJS). Look at this photograph P-1, Gary, do you recognize that?

A Yeah, it looks like number 8-2.

Q Does it look like color photograph number 2?

A Yes, sir.

Q Does it look like a blow-up of the same thing?

A Do you want me to study it awhile?

Q As long as necessary.

A Well, it doesn't show exactly everything that is shown on this photograph but it looks like a blow-up of this negative.

Q What Mrs. Smith has marked P-1 appears to be an accurate enlargement of this color photo number 2?

A Your question is this an exact blow-up -- it appears to be a blow-up of this same negative but I would have to look at the negative. Of course even then I wouldn't know whether it is printed from that negative or not.

Q Well, does it appear to you to be?

A It appears to me to be, yes.

(55) Q Is that the site you saw as you flew this area on March 19?

A You mean as depicted here?

Q Yes, sir, as depicted in color number 2.

A Yes, sir. (As this point Mr. Kreager and the witness left the room for a conference).

Q Now my question asked you to look at P-1 over here, on the extreme north side of this photograph you see a portion of this white storage tank, do you not?

A Yes, sir.

Q Did you fly between that white storage tank and the storage tank with duPont marked on it?

A I don't know.

Q You don't remember doing that, Gary?

A No, sir.

Q Do you see what appears to be a road on the south side of the photograph?

A Yes, sir.

Q Did you fly over that road?

A I don't know.

Q Where did you fly?

A Where did I fly?

Q Yes.

(56) A Well, I don't know the exact location where I flew. I flew around this area.

Q Well, did you take photographs from the east side of this plant?

A Yes, sir, I did.

Q All right, and were you west of the Neches River when you took such photographs?

A Yes, sir, I was west of the Neches.

Q All right, did you take photographs between the Neches River and this white storage tank marked duPont in P-1?

A Well, if I was west of the river and I was east of the plant, yes, sir, I was in between the tank and the river.

Q Now do you recognize the parking lot where you see the vehicles parked on the south side of the photograph?

A Yes, sir, I recognize in this photograph.

Q Did you fly over that parking lot?

A Yes, sir.

Q You told me you flew over a parking lot, define what parking lot you flew over.

A Well, it might not be in these photographs but I will look and see. Here is a photograph that depicts south of the unit, and I would say I was over that parking lot, but where I was exactly I don't know.

Q We are now looking at the color number I, is that (57) right?

A Yes, sir.

Q All right, you said you were flying in this area?

A Yes, sir.

Q All right, ascribe with this ball pen the best you can the area your plane flew over when you were taking photographs of the construction, just mark it on there.

A How much leeway am I going to have? Do you want me to just draw a single line where I estimate I could have been?

Q My suggestion would be that you draw an arc that you think covers it and the distance that you might have been off of that arc one way or the other. We don't want to obliterate the picture with the black pencil.

A You want me to mark the line across the parking lot?

Q A line over this parking lot where you think your

plane flew over.

MR. KREAGER:

If you can, Gary, and if you can't, tell him so.

A He asked could I make an estimate where I was. I can make an estimate but I can't tell you exactly.

Q Well, make an estimate, that's the best I can ask you to do.

A I remember flying over a parking lot.

(58) Q All right.

A This is my estimate. Now I might add that I could have been within a number of yards of this arc.

Q Say 50 feet one way or the other?

A Or more. At times I don't know where I was but you asked --

Q Take that photograph and the best you can ascribe the arc that you flew.

A Shooting obliquely as I did, I can only make a mark on this particular one showing the circle I flew in.

Q That would be number I.

A Yes, sir.

Q Look at color number 4 and try to do this same thing.

A I couldn't do it on number 4 because I don't think I was ever in this area.

Q Incidentally, did you discuss this matter with

anyone from duPont?

A No, sir.

Q Did anybody call you and report to represent duPont on the telephone and ask you who you were working for?

A Yes, sir.

Q Who did the man say he was?

(59) A He said he was Mr. Brook.

Q What did you tell him?

A I don't know.

Q You don't know what you told him?

A No, I don't know exactly.

Q What do you think you told him?

A I think I told him, yes, sir, I was shooting these photographs, and he asked why, and I told him my father instructed me to, Rolfe Christopher instructed me to, and he asked on further, and I don't recall how the conversation went.

Q Did you tell him for whom you were taking them?

A No, sir.

Q Did you know?

A Yes, sir.

Q Why didn't you tell him?

A Why didn't I tell him who I was shooting them for?

Q Yes.

A Well, it was none of his business.

Q That's your position, that it was none of his business?

A Yes, sir.

Q Do you still have that position?

A Yes, sir.

(60) Q I asked you under oath who were you shooting the pictures for?

MR. KREAGER:

I advise you not to answer the question.

A Mr. Kreager advises me not to answer.

Q Does Mr. Kreager advise you not to answer or you are free not to answer?

A I'm free not to answer.

Q So you just choose not to answer?

A No, sir.

Q If he told you to answer would you answer?

A No, sir.

Q Why?

A I would want to talk to him first.

Q Look at color photograph number 6, Gary, is that another oblique?

A Yes, sir.

Q Did you fly over any of that area shown in that photograph?

A Yes, sir.

Q Mark on it the best you can the area you flew over.

A I don't know exactly where I flew over.

Q I understand.

A I could have flown over these farm houses and this plant out here.

(61) Q Were you still flying clockwise circles?

A Yes, sir, to my knowledge I flew clockwise all the time.

Q Naturally you would have had to turn back to the east?

A That is correct.

Q Describe that area for me.

A You might give me another photograph.

Q Here they are, nine colors. Did you request any authority from duPont to fly their property?

A No, sir.

Q Did you request authorization to take pictures of their property?

A No, sir.

Q You just felt like you had the right to do so?

A Well, I was an employee and working for Christopher's Studio.

Q Can you ascribe this area that you flew over?

A That one was a lot the opposite way. For instance, in this photograph I was probably over this wooded area.

Q What about these 3 round tanks that show up on color number 6, did you fly over them?

A Not to my knowledge.

Q Did you attempt not to fly over duPont?

(62) A No, sir.

Q Your object was to take this area under construction and to encircle it, is that correct?

A That is correct.

Q Now what would you consider to be the center of construction? Take one of these photographs and point out to me the area that you would consider to be the center of your object.

A Looking literally here, here is a road and here is the furthestest road, and here would be the center.

Q You are looking at color print number 2?

A Yes, sir, I'm looking at color print number 2.

MR. KREAGER:

You are pointing to what object?

A Okay, I am pointing --

Q The southern most --

A That's right, the southern most of the four stacks.

Q Put a circle around it that you call the center.

A Okay, this would be the center.

Q Can you look at another of these photographs from another view and tell me what the center would have been?

A Yes, sir, it would be here, the same stack, if I'm not mistaken.

Q Look at number 9 and put a circle on it.

A Number 9, a circle.

(63) Q Okay, number 5, and I ask what you would consider the center --

A The center of my area that I am shooting?

Q Uh-huh.

A All right, sir.

Q And the same thing on number 8, put the circle in the center.

A All right, sir.

Q When you put that circle, you put it way over on the left side, that was not the center of that particular shot, was it?

Q That was the center of that particular area?

A That's right, that was the center of the particular area.

Q If you had dropped a plumb bob from your camera to the ground you should have gone straight down, wouldn't you?

A That is correct.

Q From where the plumb bob hit the ground how far was it from this area?

A I don't know.

Q What is your best estimate of it?

A Well, how can I estimate how far I was from the center of this plate if I dropped something vertically down from (64) my plane? I could step it off now or measure it now.

Q You can't tell me, Gary?

A No, sir.

Q At any point?

A I can't tell you.

Q Can you look at color number I and estimate the distance from the ground or the black mark you have there to the center towers you have just described?

A Well, I can estimate it would be from the black mark I drew on photograph number I, it would be a couple of thousand feet.

Q 2,000 feet?

A My estimate is around 2,000 feet.

Q But you do know you flew over the parking lot.

A Yes, sir, over this parking lot.

Q All right, Gary, what was your angle of photography toward the earth's surface?

A What do you mean by that, Mr. Keith?

Q Well, if we would consider the level ground as being the earth's surface --

A Yes, sir.

Q Your camera was at a 90 degree angle to the surface of the earth?

(65) A Yes, sir.

Q Or was it at some less angle?

A The camera angle?

Q Yes, the camera angle, basically what was it?

A Well, it was shooting obliquely.

Q I understand that if it was not perpendicular it was oblique?

A Yes, sir.

Q Well, what would you consider to be the normal angle of your camera as you shot this?

A I have never estimated so far as the degrees of the camera angle that I shot it.

Q Well, just look at it --

A Well, could I say 45?

Q Does that seem about reasonable to you, and I realize you don't know precisely.

MR. KREAGER:

Can you reasonably estimate it, and if you can't don't be pressured into it.

A I can't estimate the camera angle. I can't estimate how many degrees it was.

Q Can you get within 20 of that estimate?

A Well, give me a wider range and I will see if I can get it between. You said within 20 degrees?

(66) Q Yes, obviously it was not parallel to the earth's surface and obviously it was not perpendicular.

A Right, sir.

Q So it was somewhere within a range of 90 degrees.

A Yes, sir.

Q How close to that range was it?

A I would say 45.

Q Now did you ever deliver these photographs to anyone?

A By that you mean to a client?

Q To anyone?

A No, sir.

Q Have you ever had any discussion with the guy that hired your dad?

A No, sir.

Q About this matter?

A No, sir.

Q Have you ever seen him to your knowledge?

A I don't know him.

Q Then to your knowledge you haven't seen him, is

that right?

A That is correct, I don't know him.

Q Maybe you saw him at lunch, if you don't know him, you don't know.

(67) A That is correct.

Q All right, did anyone ever discuss with you the purpose for which these films were to be taken?

A No, sir.

Q Incidentally, Gary, at the time you were flying that area did there appear to be many men working in the construction there?

A I didn't notice.

Q Well, it doesn't look like there are very many men in the picture, does it?

A I haven't studied them so far as personnel in the plant.

Q Can you read into the record what these initials are in the lower right hand corner appear to you to be on these 16 photographs?

MR. KREAGER:

Unless, Bob, he knows, I think they will have to speak for themselves. If he knows, I have no objection.

Q Read them, if you can, Gary.

A Okay.

Q If you can't read them, that's alright.

A This is what it looks like to me.

Q You think it came out WEK?

A Yes, sir.

(68) Q I believe that's all I have. Thank you.

CROSS EXAMINATION

BY MR. KREAGER:

Q Miss Odessa, I would like to introduce exhibits 1 through 9, being the colored photographs, and 1 through 7, being the black and whites, and have them attached to the deposition.

MR. KEITH:

I strenuously object, and I will retain them in my possession and you may look at them at any time you want to.

Q I want to have them attached to the deposition, and I feel I am entitled to.

MR. KEITH:

No, you are not. Mr. Tucker gave them to me and I will make them available to you at anytime you want to look at them.

MR. KREAGER:

Is that you all's agreement?

MR. KEITH:

I don't know how far our agreement went. It was

not to offer them in evidence or make them public, I will assure you of that.

MR. KREAGER:

I will make my offer, and we will discuss it later. I don't know the situation there.

MR. KEITH:

You can look at them in my office at anytime you want to so long as they stay in my possession.

MR. KREAGER:

And likewise I will do the same with this large photograph you were questioning about. I tender that in (69) evidence too.

MR. KEITH:

Well, you can't have that one today.

MR. KREAGER:

The point is, the record is not going to be complete without the photographs despite whatever notes are made.

Q Now Gary, have you had occasion to have some experience in taking aerial photographs?

A Yes, sir.

Q Prior to this occasion?

A That is true.

Q Had you had some considerable experience with the camera that you used on this occasion?

A The nomenclature of it and how it works, yes, sir.

Q Had you had occasion to use that very same camera in taking photographs of construction of industrial areas in this county?

A Yes, sir.

Q At the time that the photographs which we have identified as being the color photographs 1 through 9, and the black and white photographs which are marked 1 through 7 were taken, by whom were you employed?

A Christopher's Studio.

Q Were you an employee of that company at the very moment you snapped the shots?

(70) A Yes, sir.

Q And an employee of that company at the moment that you got in the airplane?

A That is correct.

Q Were you an employee of that company at the moment that you got in the airplane?

A That is correct.

Q Were you an employee of that company when Mr. Brook called you and wanted to know who the photographs were taken for?

A That is correct.

Q Did you pass that information on to Mr. Rolfe Christopher?

A Yes, sir, he knew that I spoke to Mr. Brook.

Q And Mr. Rolfe Christopher, what is his connection with Christopher's Studio?

A He is the owner.

Q Now you have been engaged in taking commercial photographs for how many years?

A Six.

Q Is this a full-time job that you have here?

A Yes, sir.

Q Or is it part-time or what?

A It is full-time.

(71) Q Are these photographs taken at random or are they taken for a client?

A You asked about commercial photographs?

Q Yes, sir.

A Yes, sir, they are taken mostly -- 95% of them, they were taken for a client.

MR. KREAGER:

By that you mean somebody commissioned you to take them?

A That's right.

Q Now in connection with the photographs taken that we have been identifying here in this case, was there anything different in the procedure or manner that they were taken, developed and printed than all the other aerial

photographs that you took?

A Nothing was different about this procedure, no, sir.

Q Anything different in the manner they were developed or printed?

A No, sir.

Q Was there anything different in the manner in which you acted at anytime in regard to them?

A No, sir.

Q As to other aerial photographs or other photographs (72) that have been taken in the course of your employment with Christopher's Studio, when someone calls up and wants to know who took them, what is the procedure?

A Well, first of all I have to look up to someone which is Rolfe Christopher, and usually I go to him unless it is something that I have to make on the spot, but I don't reveal any customer.

Q Do you have any authority whatsoever to reveal the name of any of the customers or clients of Christopher's Studio?

A No, not at all.

Q Now what are the facts as to whether or not you placed in my possession the photographs that we have identified here as being 1 through 9 color, 1 through 7 black

and white, you and your father placed those in my possession, what are the facts, is that right, wrong or indifferent?

A That is correct, I didn't but I think he did.

Q Can you identify these as being the same photographs?

A Yes, sir, to my knowledge they are.

Q Did you not see in my possession the negatives to these photographs?

A I did not see the negatives.

Q All right, if I understand you correctly you said there were two more pictures taken, the negatives of which were (73) not printed.

A That is correct.

Q And those were color, is that right or wrong?

A Yes, sir, color.

Q And you delivered those, do you know where they were delivered --

A No, I don't.

Q The point being, a few minutes ago when you started off you said there were 15, and now we know, do we not, that there were 16?

A 16 is correct, which means there was one more black and white than I thought there was.

Q All right, now Gary, tell us whether or not there

was any action taken by you or the pilot which in any manner would endanger anyone on the ground below you during the taking of these photographs.

A No, sir, never at any time did I do anything that would endanger anybody on the ground.

Q My question would concern you and the pilot.

A No, sir, to my knowledge the pilot didn't do anything.

Q All right, what are the facts with reference to the airplane itself, was there any action taken by the airplane itself during anytime during the taking of these photographs (74) that would have endangered anybody on the ground?

A No, sir.

Q And I believe your testimony was you were about 1,000 feet above the ground, in your best estimate?

A That is correct.

Q And I believe your testimony is your best estimate would be 2,000 feet of the center of the construction area?

A Yes, sir, I was approximately 2,000 feet away from the center.

Q Were you aware at the time these photographs were taken whether or not duPont had any internal regulations with persons on it's property with respect to whether

or not they would or could not take photographs of all or any part of it?

A No, sir, I wasn't aware of it.

Q At the time you took the photographs involved in this case, what are the facts as to whether or not duPont had any so-called trade secrets or other type secrets in the area being photographed?

A No, sir, I wasn't aware of that.

Q What are the facts, Gary, with respect to your knowledge of the photography business, the very same structures could have been photographed from the roadside, from the river and from adjacent land, from the overpass without ever getting on or even particularly near the duPont structure or property?

(75) A That's right. To review your question, you asked whether this could have been done from this adjacent property?

Q Right.

A From the road, from the river?

Q Right.

A Yes, sir, it could be taken -- photographs could have been taken.

Q Do you all have photography equipment using specially telephoto lens that could pinpoint the very minute details of one square foot or one square yard of

those structures and still take the photograph from the overpass or the road?

A That is correct, we have equipment available.

Q I don't have any further questions.

REDIRECT EXAMINATION

BY MR. KEITH:

Q Gary, I want you to look at all these pictures that you have gone out there and taken by air, I want you to look at color photo number 7, I have circled two structures that are in red or some rust color, and I want you to testify to me under oath whether you can testify photographs of those two items could have been taken from any public highway or road?

A I doubt that I could show these two red units but I don't know.

(76) Q And the reason is there would be structures between you camera and those two items I have marked in red, is that right, something between you and them --

A From this photograph I can't tell.

Q Are you testifying under oath that you could shoot a picture of that from the railroad or the public highway?

A Looking at this right here?

Q Either one of those circled in red?

A Well, I don't know whether I could take it from

the river if I shot toward this red unit here.

Q Do you think you could take that from the river?

A No.

Q Do you think you could take it from Broussard's Curve on Highway 347?

A No, sir.

Q Do you think you could take it from the San Jacinto Building?

A No, sir.

Q Do you think you could take it from the next public highway south of that spot?

A No, sir, not from the highway.

Q Do you think you could take it from the railroad?

A Possibly.

Q Do you testify you can take it from the railroad?

(77) A No, sir, I don't know that I could.

Q All right, look at the area that is circled in red north of this spot.

A Okay.

Q You couldn't take that from either of those public roadways, could you?

A No, sir.

Q You just couldn't see it because there would be something between your camera and it.

A That's right, there would be something in between.

Q That's all.

MR. KREAGER:

Mighty fine, Gary.

CLOSE OF THE DEPOSITION

* * * * *

..oo00oo..

PORTIONS OF DEPOSITION OF
CLIFTON WAYNE GREGORY

(Number and Title Omitted) (Filed: May 14, 1969)

* * * * *

(3) CLIFTON WAYNE GREGORY,

having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. KEITH:

Q Will you tell us your name, please?

A Clifton Wayne Gregory.

Q Mr. Gregory, my name is Bob Keith, and I practice law here in Beaumont, and I represent the duPont Company in a law suit involving Mr. Rolfe Christopher and some other people, some of whom we know and some of whom we don't know. Do you understand that you are here giving testimony today which is testimony that can be used in the trial of this case?

A Yes, sir, I do.

Q All right, now I want you to, if you will, listen to my questions and make certain that you understand them before you try to answer them. If you don't understand my question don't guess at what I am driving at.

A All right, sir.

Q Ask me to repeat it or rephrase it.

MR. KREAGER:

That's very important, I didn't tell you these things. Don't guess, and if you don't understand it, don't answer it until you have gotten either straight with him or if you want to you can talk to me.

(4) A All right.

Q Be very careful. So far as you know, have you ever seen me in your life?

A No, sir, so far as I know, I haven't.

Q You have discussed this matter, generally speaking, with Mr. Kreager today and on one other occasion, is that right?

A Yes, sir.

Q Where do you live?

A I live at Sour Lake, Texas.

Q Where?

A Well, it is outside of town. I get my mail through a post office box.

Q What is your father's name?

A Judson Gregory.

Q Judson?

A Yes, sir.

Q What community, you say Sour Lake, Texas, and if somebody around there asked you where you live, where would you tell them?

A Well, I would say in Sour Lake.

Q Well, do you live on somebody's farm?

A Well, I live on my own farm, our own farm.

Q And where is it located?

(5) A It is 3-1/2 miles east of Sour Lake on Highway 105.

MR. KREAGER:

The Gregory place.

Q All right, what side of the road is it on?

A Going from Sour Lake or here?

Q Well, is it on the south side or the north side?

A It is on the south side.

Q What is your birthdate?

A 4-21-48.

Q So I take it you have just turned 21 years old this past week, is that right?

A That's right.

Q Are you married or single?

A Single.

Q Have you ever been married?

A No.

Q What is your occupation?

A Flight instructor.

Q Do you have any other?

A No, sir.

Q Do you go to school?

A Yes, sir, I go to Lamar Tech.

Q What do you do at Lamar Tech?

A I'm a student, studying business.

(6) Q What classification?

A Classified as a sophomore.

Q Were you in the military service?

A No, sir.

Q Did you graduate from the Sour Lake High School?

A Hardin-Jefferson.

Q Hardin-Jefferson, when?

A In May of 1966.

Q All right, when you got out of Hardin-Jefferson, where did you go next?

A I started to work at Beaumont Municipal Airport.

Q When did you go to Lamar Tech?

A The following semester.

Q Okay, you started working at Beaumont Municipal

in May of 1966 or June of 1966?

A June of 1966, I believe.

Q All right, you have worked out there continuously?

A Yes, sir.

Q Okay, for whom do you work?

A I work for Lee Sheffield.

Q All right, have you worked for Lee ever since he has operated Municipal Airport?

A Yes, sir.

(7) Q Did you work out there before Lee went out there?

A Yes, sir.

Q Just for a brief period of time?

A Yes, sir, for 3 months when there was no manager of the airport, during the summer months.

Q Okay, what is your job out there?

A I teach private and commercial planes, airplanes.

Q Okay, I take it you are some type of licensed pilot?

A That is correct.

Q When did you receive your first license?

A I received my first license in March of 1967.

Q Did you know how to fly when you went out there?

A No, sir, I didn't.

Q In June of 1966?

A No, sir.

Q So I take it that you started taking some lessons?

A Right.

Q You didn't go out there as a flying instructor?

A No.

Q What did you go out there doing?

A I started as a line boy, gas planes.

Q Did you start taking flying lessons?

(8) A That is correct.

Q You received your first license in March of 1967?

A Right.

Q What type license was it?

A It was a private license.

Q How many hours does a fellow have to have to get that license?

A Forty hours.

Q Who issues that license?

A A designated examiner for the Federal Aviation Administration, or the Federal Aviation Administration itself will issue it.

Q Have you got any other license?

A That is correct. I have a commercial now.

Q When did you receive that?

A I received that in July of 1967.

Q And that's just called a commercial?

A Correct, commercial airplane, that is distinguishing it from helicopter and so forth.

Q Okay, how many hours do you have to have for that?

A You have to have 200 for that.

Q Okay, can you go to work for Trans-Texas, for example, with that license?

(9) A No, you probably could under certain circumstances, but you would most likely have to have an instrument rating.

Q When did you get instrument rated?

A I am not instrument rated.

Q You are not instrument rated, so the only two licenses you have are private and commercial?

A Well, I have a flight instructor.

Q When did you get that?

A Well, I got that in, let's see now --

MR. KREAGER:

Wayne, don't agree until you think about it. You said you don't have any other license but you do have.

Q Do you have a flight instructor's license?

A Yes, sir. 4-17-68.

Q Let me see that just out of idle curiosity,
4-17-68?

A Right.

Q Wayne, do you mind coming around here and looking at this thing with me a minute?

A All right, sir.

Q Now your certificate number, is that what that means?

A Right.

Q That's 1744241, then it has the initials C.F.I., does that mean commercial flight instructor?

* * * * *

(16) Q What is a short charter?

A Well, I don't fly any big charters for the fact I don't have my instrument rating.

Q What is a short charter?

A Say a charter of a day or hours. In other words, no overnight trips.

Q Because you don't have your instrument rating?

A Right.

Q Okay, now what is this business about flying photographers, what photographers do you fly?

A I don't know them by name but any photographers that want to fly I will fly them.

Q If I were a photographer how would I go about

making arrangements for you to fly me?

A Call Lee Sheffield.

Q All right, were you working for Mr. Sheffield on March 19 of 1969?

A Yes, sir, I was.

Q Did you fly Gary Christopher over the duPont plant and take some pictures?

A Yes, sir, I did.

Q How did you all make those arrangements?

A The arrangements were made with Lee Sheffield, (17) and I was notified when I got to the airport, and I flew him.

Q Who notified you?

A Lee Sheffield.

Q What did he notify you of?

A That I had a flight for pictures.

Q Did Lee actually speak with you?

A Right.

Q What did he say?

A He told me that I was booked, and I believe it was around 12 o'clock, to fly Gary Christopher to take pictures.

Q Now are you paid by Christopher or by Sheffield?

A By Sheffield.

Q And how much are you paid?

A I work a straight salary.

Q Now by straight salary, you mean you make shall we say \$100 a month whether you fly 100 hours or 200 hours, is that correct?

A Well, I'm paid \$75 a week whether I fly 200 hours or 100 hours.

Q All right, so whether you flew Christopher 1 hour or 2 hours did not effect your salary?

A No.

Q Now, so personally you did not make anything (18) special about taking Christopher up, for example?

A That is correct.

Q What time are you to report to the flying school -- the flying service?

A After school each day, and normally it is 7 o'clock on Saturdays.

Q How many hours of flying time did you have March 19, 1969?

A I couldn't tell you exactly how many I had but I had roughly 700 hours.

Q Now Mr. Sheffield told you what when you got out there at noon on the 19th?

A That I was to fly Christopher.

Q Did he tell you where he was to take pictures?

A No, I don't recall him telling me where.

Q All right, when did you learn where you were going?

A When Gary arrived at the airport.

Q Which I take it was after you got there?

A Right.

Q What did Gary tell you?

A He told me to go to duPont.

Q Did he tell you who he was working for?

(19) A No.

Q Did he tell you what kind of pictures they were?

A No, sir.

Q So you just got out there about noon and that's when you learned you were to take Christopher up shortly?

A That is correct.

Q Did anybody else go with you?

A No.

Q Who decided what plane you were going to fly?

A Sheffield.

Q What did he say?

A Take the Cub, which is the Piper J-3 Cub.

Q What are the call numbers on that Cub?

A NO980050.

Q All right, is there any other Piper Cub like that in this part of the country?

A Yes, there is.

Q Where is it located?

A I couldn't tell you.

Q Is there another one that is based in this part of the world?

A What do you mean by this part of the world?

Q I mean in Jefferson or Orange counties. Who else

* * * * *

(22) Q Do you run that plane from the front seat or the back seat?

A From the back seat.

Q I take it that Christopher rode up front?

A That is correct.

Q One seat is behind the other?

A That is correct.

Q And the photographs were taken from which side?

A That would be from the right side.

Q Was the door open or closed?

A It was open.

Q How do you open the door, Wayne?

A There is a handle, and there is two parts to the door, there is an upper part and a lower part, and the upper part just swings out and the lower part has a latch on it, and the upper part latches to the bottom of the wing.

Q With a piece of bailing wire?

A Right.

Q What about the bottom?

A It just stays against the plane.

Q But the doors don't swing like the ordinary car door?

A No.

(23) Q All right, what route did you follow down there to take these pictures?

A Let's see, it was from the airport normally down Cardinal Drive right straight to duPont.

Q All right, when you left Beaumont Municipal do you remember what the wind was like?

A As I remember it was fairly gusty.

Q Which direction would you have taken off?

A We took into the north, I believe.

Q All right, and you swung around and headed back southeast?

A Yes, southeast.

Q You say you went to Cardinal Drive and flew basically along Cardinal Drive?

A Yes, sir.

Q Did you take any pictures between Municipal and duPont?

A On the way back we did.

Q Where did you take them on the way back?

A Between Cardinal Drive and the old Fannett Road.

Q How long did it take you to get down to duPont?

A With the north wind it probably took us ten minutes.

Q That's from the time you started up until the time --

(24) A That is correct.

Q What is your flying speed?

A Approximately seventy-five miles an hour.

Q Okay, what altitude did you fly between Beaumont Municipal and duPont?

A Normally we fly around a thousand feet.

Q Do you make any record of what the altitude was?

A No, sir.

Q Do you have any record of it?

A No.

Q Is there any way you can go back and try to establish what you altitude was?

A No, sir.

Q Now the charge for this flight, I believe, was seven-tenths of an hour which would be forty-two minutes, is that right?

A That is correct.

Q That's \$8.40?

A Really I wouldn't know what he charged because I don't know the rates on the Cub.

Q All right. Well, the seven-tenths of an hour would run from when to when?

A From the time we left the ground until we got (25) back.

Q Okay, that's take off to touch down, as it were?

A Well, takeoff to parking time.

Q What was your recollection of the duration of the flight?

A The total time we flew now?

Q Uh-huh.

A That seems correct, about seven-tenths.

Q And you flew at an altitude of about one-thousand feet?

A Right, flew around a thousand feet above the ground.

Q What did you do when you got to the duPont plant?

A Okay, we circled the plant to the right and he took pictures.

Q To the right you say?

A Correct.

Q In a clockwise motion?

A That is correct.

Q Did you tilt the plane in some way so he could get a better shot of the ground below?

A Not so much that, you have to turn the plane.

Q You had to bank the plane?

A Correct.

Q That's basically what you were doing is flying in (26) a circle?

A No, in a circle on that particular day would have drifted us toward the south. You see, you have to compensate for the wind so it would be an oblong.

Q All right, you fly an elliptical course?

A Right.

Q What altitude were the pictures taken from?

A We took some of the pictures I would say, oh, around fifteen hundred feet mean sea level, and the others would be around eight or nine hundred feet mean sea level.

Q Did you obtain any authority or permission from anybody to take these pictures?

A No.

Q Did you obtain any authority from anybody to circle the duPont plant and photograph the duPont plant?

A No.

Q Did you obtain any permission from the Tower Control at the Jefferson County Airport?

A That is correct. We had permission.

Q Who did you get the permission from?

A Mr. Sheffield had received clearance.

Q Did you get it?

A No.

(27) Q You did not do anything about it?

A No.

Q Do you have a radio on that plane?

A No, we don't.

Q Do you know that Mr. Sheffield obtained clearance?

A Yes, sir.

Q Did he tell you he had?

A Yes, sir.

Q What did he tell you?

A He said he had permission from the Tower.

Q To do what?

A To take pictures of the duPont plant.

Q Now can we establish some areas on the ground so you could tell me what you flew over and what you circled and what course your plane traveled?

A I believe we probably could.

Q What do you call the duPont plant, I mean what area do you call the duPont plant?

A Would you mind rephrasing that?

Q Where is the duPont plant?

A The duPont plant is next to -- I guess it is the Nederland Highway or Nederland Road south of Beaumont.

Q Is there a railroad that runs along the side?

(28) A I don't recall whether there is or not.

Q Well, is there a river that runs along one side of it?

A Yes, sir, that is correct.

Q What river do you call that?

A That's the Neches River.

Q Do you recall whether or not the plant lies basically between the railroad and the river?

A I know it lies near the river.

Q What about the railroad, is it close to the railroad?

A Where is the railroad?

MR. KREAGER:

He doesn't know where the railroad is.

A I assume the railroad runs parallel to the highway there but I don't know just from memory.

Q All right, have you ever flown over that plant taking pictures before?

A Yes, sir, I have.

Q When was that?

A Oh, approximately a week or two weeks before.

Q Do you know the man's name that you flew with?

A I don't recall it offhand.

Q Did you obtain permission from anybody to fly that (29) time?

A No.

Q All right, what altitude did you fly to take photographs on this occasion, shall we say a week before?

A Approximately the same altitude.

Q Fifteen-hundred feet and did you say eight or nine hundred feet?

A It ranges eight or nine and fifteen-hundred sea level.

Q Why would it vary?

A Depending on what he wanted to photograph. Out at the duPont plant I remember the week before we were high at certain times because there was steam and he wanted to get the picture where the steam wouldn't be in our way.

Q Speak up a little bit so I can hear you, Wayne, if you will. With Gary what basic altitude did you fly to take the photographs?

A Oh, I would say we were five-hundred feet above any obstacle which would range around eight-hundred feet.

Q You were five-hundred feet above any obstacle?

A Right. This is a normal practice to try to stay five-hundred feet above any obstacle.

Q So I take it you would have flown above obstacles which you would consider about three-hundred feet up?

(30) A The obstacles you refer to are stacks or cranes or towers or whatever they call them. At no time did we fly over these, all the time we flew around these.

Q Did you fly over what you consider the duPont property, the duPont plant itself?

A Right. At one part of our circle we were over the parking lot.

Q All right.

A On an oblong circle.

Q Were you photographing any particular area?

A So far as I know, he just pointed to me where he wanted me to circle, and somewhere around these towers.

Q Did it appear to you to be an area under construction?

A Right, it was under construction.

Q Would you describe it as being on the north side of the plant?

A Right, it would be on the north side.

Q All right, was it on the east or the west side?

A Pardon me now --

Q Was it on the east side or the west side?

A I wouldn't know.

Q Was it closer to the river or closer to the highway?

(31) A Still I wouldn't remember.

Q All right, which direction would you be flying -- by parking lot, I take it you mean the main parking lot there on the duPont plant or what appears to be the main parking lot?

A Yes, sir.

Q I don't know what they call it, but when you would fly over the parking lot which direction would you be headed?

A We were headed to the west.

Q All right, would you then turn clockwise?

A Yes, sir.

Q All right, where would you be when you turn clockwise?

A We would be back toward the river.

Q No, I mean at the time you would make your turn -- let's go at it a little different way.

A All right.

Q Over here on the right-hand side of this page I am going to put Neches, let's call that -- is that to the east?

A Right.

Q All right, the Neches runs basically north and

south, does it not?

A Yes, sir.

Q Okay, I've put a little box in here, and I am not (32) trying to draw anything to scale at all.

A Right.

Q I just put parking lot, okay? Now at the time -- now the highway would be west of the river, would it not?

A That is correct.

Q All right, let's just put a line here and we will call that highway. All right, now describe as best you can the area that you would traverse as you made this ellipse around and about the property taking the photographs?

A All right, can I fill in some more now?

Q Just put whatever you like, not to scale.

A Okay, as well as I remember there was a tower in construction right out in here.

Q All right, just write area of construction by c-o-n-s-t.

A Our ellipse around this would be somewhat like this -- it was larger than that because I remember we came over the highway around like so.

Q All right, now you have drawn an area over the parking lot over the north side of the construction area

that would encompass Highway 347 as well?

A Right.

Q All right, what was the radius of your ellipse?

(33) A I would say twenty-five-hundred feet from I would say the center around in here.

Q All right, it would vary, I must assume?

A Right.

Q And what would be the shortest distance the radius would be?

A Oh, I would say maybe a thousand feet.

Q All right, now the bulk of the photographs were taken -- let's take another point, let's just put an X in the center of construction, and I marked that with a blue pencil, okay?

A Right.

Q The radius that you would fly from the center of the new construction would be what?

A It would vary just as this varies.

Q It would run in what range?

A I would say from one-thousand to two or three-thousand.

Q When you went over the parking lot what would be the radius from the center of construction to the point on the ground where the plane was?

A I say fifteen-hundred feet.

Q All right, and you say that you were five-hundred (34) feet above the structures, a minimum of five-hundred feet above the structures?

A Right, that is correct.

Q Now besides the area under construction you also flew over what you and I would call part of a refinery or plant, did you not?

A Well, let's see, as well as I can remember we -- the only part that we were over here was the parking lot, and the rest around here, this is all open, and we were photographing in this construction area, and so far as I remember there was, let's see, there was no refinery or anything because there is nothing else out in here.

Q Well, what lies between the construction area and the river?

A Oh, let's see, I don't know right offhand.

Q All right, do you recall that there was substantial pieces of equipment and towers and machinery and whatever they have around refineries that is familiar to you and me having grown up in this area?

A So far as I know, there is none in here.

Q You are talking about east of the construction thing and the river?

A I am talking about the thing I have drawn here

(35) as duPont. This is all duPont and we are around it.

Q And you say that the only part you flew over would be the parking lot itself?

A Right.

Q Do you recall any big white storage tank looking affair?

A Right.

Q Put a circle around that in blue.

A That would be right in here, around the construction.

Q Did it appear to be new?

A Yes, sir, it did.

Q All right, you made a circle up on the north part of the area, is that right?

A Right.

Q Did you see any men down there below?

A No, sir, I didn't. I saw one man.

Q You saw one man?

A I saw one man.

Q All right, do you know how many men were at work out there that day?

A No, sir, I have no idea.

Q Do you know what the density a person per square mile is on that side that you were flying over?

(36) A No, sir, not offhand I don't

Q What would you estimate it to be?

A I have no idea -- let's see, would you rephrase that? I will answer you but --

Q Well, in your judgment as you flew over it that day what was the people per acre population, that is, one thousand per acre or one man per thousand miles or one man per mile?

A So far as I could see it was one man per duPont.

Q What about automobiles, were there any automobiles parked out there?

A Yes, sir.

Q Was there just one automobile parked out there?

A No, sir, there wasn't just one automobile.

Q How many automobiles were parked out there?

A I have no idea.

Q You saw literally hundreds, did you not?

A I would say.

Q You were flying over many, many of them?

A Over the automobiles, that is correct.

Q You didn't see any shopping center like the Gateway or any other type shopping center, did you?

A Oh, no.

Q You saw no other industrial area in this area

(37) other than duPont, did you?

A That is correct.

Q You saw a substantial refinery looking operation out there, did you not?

A What do you mean by substantial?

Q Large.

A Not large.

Q Not large, not spread out over a large area?

A No.

Q And you weren't flying through the very heart of it?

A No.

Q And when flying over the parking lot you did not fly over the heart of it?

A That's not the heart, the parking lot.

Q Were there refineries immediately south of it?

A No, sir, not in the immediate area.

Q What do you call the immediate area?

A Three or four miles.

Q So that I will understand you, Mr. Gregory, I take it from what you say that from the parking lot south shall we say --

A It is open.

(38) Q All right, there is no refinery installation or no refinery-like installation for what, three or four miles, is that what you said?

A Yes, sir. You said substantial size refinery, there may be a tank or something out there.

Q I don't mean just a scattered tank farm, I mean a refinery itself?

A No, sir.

Q All right, what about to the north of this white tank, is there any substantial refinery installation?

A I would say a mile or approximately two miles is Texas Gulf Sulphur.

Q All right, that would be the next one to the north?

A Right.

Q What about to the east of this construction area where I have the X, was there any refinery installation?

A There was nothing but the river where the mothball fleet is, and swampland.

Q You mean once you get out of the construction area itself there was nothing to the east until you get to the river other than just marsh?

A I am saying right in here there was no substantial refinery, as you say.

(39) Q What about to the south or to the west, was there a substantial refinery?

A No.

Q Do you have any idea how many people were down there in that area that you were flying over?

A Well, no more than judging from the cars.

Q Well, judging from the cars, you said you only saw one man with duPont, how many cars did you see out at duPont?

A Well, possibly one-hundred or so.

Q In you opinion how many people were down there?

A Well, maybe there was one-hundred people if there were one-hundred cars, and I saw one man.

MR. KREAGER:

We are taking this on agreement and reserving objections? Some guy might have driven two cars out there that day.

Q How far is it from Beaumont Municipal Airport to this duPont plant that you photographed?

A Oh, I would say ten miles.

Q How far is it from the duPont property you were photographing to the tower of the Jefferson County Airport?

A I would say five miles.

Q How about 4.09, would you believe that?

A No, I would go for five. It is around five miles according to my map, which shows a five mile radius

from the (40) airport.

Q And the duPont property is within that five mile radius?

A So far as I know it is on the edge, and that's why we call Jefferson County and tell them where we are going.

Q You mean to tell me the duPont property is outside the five mile radius, it is either inside the five mile radius or it is outside?

A It is inside.

MR. KREAGER:

Do you know that?

A No, not for sure.

MR. KREAGER:

Then don't say it if you don't know it.

Q Who publishes this map that you look at?

A Coast & Geodetic Survey. They don't have duPont, they have Mobil one dot, which is outside.

Q Mobil is outside?

A Yes, sir.

Q In your opinion, is this duPont property a congested area?

A No, sir.

Q Is the city of Beaumont a congested area?

A The city of Beaumont would be.

Q Do you know of any area in the city of Beaumont (41) that is as high as the things you were flying around?

A Yes, sir.

Q The San Jacinto Building?

A It is approximately higher, I believe.

Q In your judgment, is the population totally of the city of Beaumont or is the duPont plant higher?

A The city of Beaumont would be higher.

Q What is a congested area?

A According to just my own definition, a congested area would be an area if I was flying over it and I had a power failure I wouldn't be able to glide and land the plane, I would have to land it in this congested area, or in this area.

Q These towers and booms that you were photographing, how close were you to them within the horizontal radius?

A I would say one-thousand feet to twenty-five-hundred feet.

Q And you personally did not procure authority from the tower of Jefferson County before you started there?

A No.

Q You have sworn to something in the Federal Court

that you are saying that you did not violate any rules or regulations governing flights, what rules would govern the flights over this area, in your opinion?

(42) A Would you repeat that?

Q Well, you swore to something here, you said you did not violate any laws or any applicable regulations.

A Right.

Q What do you claim you did not violate?

A 91C.

Q 91 what?

A 91, paragraph C, that's federal aviation regulations.

Q That's the one you claim you did not violate?

A That's right.

Q What about B, did you violate B?

A Right, if it was a congested area, it was violated.

Q Were you taking off as you were flying over the duPont plant?

A No.

Q Were you landing?

A No.

Q Did you file any flight plan?

A No.

Q And you did not have a radio on board?

A No.

Q Were you within the airport traffic area of the Jefferson County Airport as you made you elliptical flight?

(43) A Yes, sir, I believe we established I was.

Q Did Christopher tell you who he was taking these pictures for?

A No, he didn't.

Q And you don't have any way of establishing other than me just taking your word for it as to how, why and where?

A That's right.

Q Now you say you were five-hundred feet above the tallest structure that you flew around?

A Right. I am pretty conscious of that I would be five-hundred feet above.

Q That's just an estimation?

A Right, but like I say, I wasn't above any of this crane or whatever it was that was there.

Q What was the nearest structure that you were about five-hundred feet above?

A As well as I remember it was a crane or something up there.

Q It seemed to be engaged in the construction operation?

A Right.

Q Did you take any pictures?

A No, sir.

Q Have you seen any pictures?

(44) A No.

Q Have you heard of anyone who has seen these pictures that you took?

A No.

Q Now what about these pictures you took over the Cardinal Drive area, is that were you took some more?

A Right.

Q What altitude did you take them?

A I believe they were from two-thousand feet.

Q They were taken at a higher altitude than from the duPont plant?

A Yes, sir.

Q Why?

A He wanted to accomplish the whole area of this intersection, as well as I can remember.

Q How many circles did you make around the intersection?

A Three or four.

Q How many pictures did he take there?

A I have no idea.

Q How many circles did you make around duPont?

A Probably five or six.

Q Who decided whether you would go up or down?

(45) A Christopher.

Q How would he advise you?

A He would just tell me.

Q Did he turn around and say go lower or go higher?

A Yeah.

Q Did he tell you what he was trying to take?

A He would just point out an area. He never told me what he was trying to take.

Q He would just point out like so?

A Right.

Q How did you decide when you had enough?

A He told me.

Q He said, "go to the house"?

A Yeah.

Q I believe that's all. Thank you, sir.

CROSS EXAMINATION

BY MR. KREAGER:

Q Wayne, did you fly duPont people around over the same area?

A Yes, sir.

Q Is that the flight you were talking about a few weeks before then?

A Right.

(46) Q That's all.

REDIRECT EXAMINATION

BY MR. KEITH:

Q Did you fly higher or lower with those duPont people?

A Well, I know it was the same altitude.

Q What about the area, did the area differ?

A No, the area would probably be around the same area.

Q Did they both appear after the same thing?

A I have no idea. Both of the areas were the same.

Q You were circling the area substantially the same?

A Right.

Q Wayne, will you sign that and we will attach that masterpiece to the deposition for whatever value it may have. Put that in the deposition, please.

CLOSE OF THE DEPOSITION

* * * * *

..oo00oo..

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

(Filed: May 26, 1969)

COME NOW the defendants, Rolfe Christopher and Gary Christopher, and files this their Motion For Summary Judgment, and for cause would show unto the Court the following:

I.

Attached to and incorporated into this Summary Judgment are affidavits made by Rolfe Christopher and Wayne Gregory, same being attached as Exhibits "A" and "B". Also on file are the depositions of Rolfe and Gary Christopher and Wayne Gregory.

II.

As a matter of law, plaintiffs' complaint fails to state a cause of action, plaintiff having no property interest or right in "trade secrets and know how" as such. Any such trade secrets and "know how" are not exclusive property of plaintiff and plaintiff is not entitled to protection or relief against any party who obtains, uses or discloses plaintiff's trade secrets or "know how" unless the same have been obtained by fraud or unlawful means. It is not alleged in the complaint, nor could it be truthfully alleged, that defendants violated any law or regulation or duty in exercising their rights to use the air space in, over and around plaintiff's properties. Likewise, there is no evidence in the affidavits or depositions which would raise any issue that the defendants obtained any trade secrets by fraud or unlawful means.

III.

As a matter of law the complaint does not state

a cause of action and there is no issue of fact raised because under the undisputed evidence the defendants breached no law, statutory or common, and violated no regulations, ordinances, rules or duties in flying over plaintiff's property and photographing the same.

IV.

Plaintiff's properties are open to view and could be photographed from adjacent public highways, navigable waters, bridges or railroad rights of way, and plaintiff has no right of "privacy" to prevent viewing and photographing of their property and installations, and the complaint states no facts establishing any unlawful conduct on the part of defendants, and it is therefore, insufficient to state a cause of action.

V.

No fact issue has been raised by affidavit or deposition which would constitute a cause of action against defendants.

WHEREFORE, premises considered, defendants pray that a hearing be set on this motion, and that upon hearing, said motion be granted, and for such other and further relief as defendants may show themselves entitled to receive.

/s/ David J. Kreager
DAVID J. KREAGER
Beaumont Savings Building
Beaumont, Texas 77701
ATTORNEY FOR DEFENDANTS

EXHIBIT "A"

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

Rolfe Christopher, being duly sworn, upon oath states that he is one of the defendants in Civil Action 6258, United States District Court, Eastern District of Texas, Beaumont Division, styled E. I. duPont deNemours Company, Inc. vs. Rolfe Christopher and Gary Christopher.

Affiant is engaged in business as a commercial photographer and has been so engaged for himself as Christopher Studios in the City of Beaumont for 23 years. The photographs referred to in plaintiff's original complaint were taken from an airplane flying adjacent to plaintiff's properties. The properties of which photographs were taken lie adjacent to navigable waters, to wit, the Neches Ship Channel, and public highways, to wit, State Highway 347, and to railroad rights of way. Such properties are open to view and substantially the same photographs of the same areas could be taken from the public highway from the highway overpass near plaintiff's property, from the railroad right of way, or from the navigable waters adjacent thereto. At no time did affiant enter upon any of plaintiff's property or encroach or trespass thereon.

FURTHER AFFIANT SAITH NOT.

/s/ Rolfe Christopher

SWORN TO AND SUBSCRIBED before me, the under-
signed authority, by Rolfe Christopher, on this 10th day
of April, 1969.

/s/ Doris F. Greeves
Notary Public in and for
Jefferson County, Texas

EXHIBIT "B"

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

WAYNE GREGORY, being duly sworn, upon oath
states as follows:

My name is Wayne Gregory and I am twenty years
of age. I reside in Jefferson County, Texas. I am licensed
both as a commercial pilot and as a flying instructor by
the Federal Aviation Administration (Department of Trans-
portation).

On or about the 19th day of March, 1969, I was
employed by Rolfe Christopher to fly Piper J-3 single
engine 85 hsp. airplane over certain portions of Jefferson
County, Texas, and during said flight did fly adjacent
to plaintiff's property, at which time Mr. Christopher did
take aerial photographs described in this suit.

At all times my airplane was not less than 500' in

height above all structures and not less than 500' in radius from said structures. At no time was my flight either in manner, height or any other regard, careless or reckless nor would in any manner endanger life or property. I circled the area of the construction but the path was over vacant land. There was a considerable area of basically vacant land and I was at such altitude that an emergency landing could have been easily made without hazard to persons or property.

The flight in question was at all times at heights in excess of the minimum heights set by all regulatory agencies, including but not limited to the F. F. A. Standards. The flight was not over a city, town or settlement, or open air assembly of persons. In this regard, I am familiar with and have studied the regulations applicable to a flight of this type and I am fully qualified to state under oath that my flight did not violate any of said standards and that such flight did not violate any law.

I made this same flight in the same airplane N98059 on March 10, 1969 at which time others took photographs of the same area at the same altitudes and basically the same radius.

/s/ Clifton Wayne Gregory
WAYNE GREGORY

SWORN TO AND SUBSCRIBED before me by the said
Wayne Gregory, this the 10th day of April, 1969, to
certify which witness my hand and seal of office.

/s/ Carol Lyle
NOTARY PUBLIC IN AND FOR
JEFFERSON COUNTY, TEXAS

..oo00oo..

CONTROVERTING AFFIDAVIT

(Number and Title Omitted) (Filed: June 5, 1969)

In addition to the pleadings and depositions
on file herein, Plaintiff herewith tenders the attached
affidavit of Frank Maderick in opposition to Defendants'
Motion for Summary Judgment.

Respectfully submitted,

/s/ Robert Q. Keith
MEHAFFY, WEBER, KEITH &
GONSOULIN
Attorneys for Plaintiff

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

Frank Maderich, having been by me first care-
fully sworn deposed and stated upon his oath as follows:

My name is Frank Maderich, I am thirty-seven
years of age, and live at 1470 Futura Lane, Beaumont,
Jefferson County, Texas. I hold a Bachelor of Science
Degree in Chemical Engineering from the University of

Minnesota. I am employed as a Technical Superintendent by E. I. duPont de Nemours & Company. (hereinafter referred to as duPont.)

At all times since January 1, 1969, I have been employed by duPont at its Beaumont Works, and have been engaged as Technical Superintendent of the methanol plant under construction at its Beaumont Works.

Of my own personal knowledge I know:

(1) duPont has spent in excess of several hundred thousand dollars in developing a process for the manufacture of Methanol;

(2) The process developed by duPont is different from any known process for the manufacture of Methanol;

(3) The process developed by duPont for the manufacture of Methanol incorporates substantial design features which are known only to duPont and its executive and managerial employees;

(4) The process developed by duPont for the manufacture of Methanol will permit duPont to manufacture Methanol at a cost less than that at which duPont's competitors can manufacture said product with the information known to and presently employed by said competitors;

(5) The process developed by duPont for the manufacture of Methanol is secret; has not been published, broadcast or circulated nor made known to the public by duPont;

(6) duPont has made a determined and substantial effort to avoid discovery of its "secret process" for the manufacture of Methanol;

(7) For a competitor to develop the process developed by duPont for the manufacture of Methanol will require an expenditure in excess of several hundred thousand dollars and more than 24 months;

(8) duPont is, and was upon March 19, 1969, constructing a manufacturing facility or "plant" at its Beaumont works for the manufacture of methanol in accordance with its newly developed process referred to herein;

(9) Upon March 19, 1969, about noon, I was personally present at the construction site of the Methanol Plant; at that time I saw a low-flying cub airplane circling over duPont's Beaumont Works, including the Methanol construction area. This airplane, I later learned was being operated by Wayne Gregory from which Gary Christopher was taking photographs of duPont's Methanol construction area referred to herein;

(10) Upon March 19, 1969, the airplane and photographer actually flew the aircraft over duPont's plant site (and not merely adjacent thereto) at an altitude of approximately 500 feet. As the airplane circled overhead it made several passes over the duPont plant proper and the Methanol construction area.

(11) I have studied the photographs taken by Mr. Christopher of duPont's Methanol plant under construction as referred to herein. The photographs are very good and depict portions of the Methanol plant and the processes and "trade secrets" inhering therein which could only be obtained by such aerial photography. At the state of construction the Methanol plant was in March, 1969, any skilled and trained person, knowledgeable in commonly known Methanol manufacturing processes could, from careful study of the photographs taken by Mr. Christopher, obtain and employ to his own use much of the secret process developed by duPont for the manufacture of this basic chemical. Much information depicted by these photographs -- referable to the secrets and processes developed and employed exclusively by duPont -- could be obtained from no other source (except from the plans and specifications which duPont has carefully guarded from unauthorized disclosure to others). No photograph, other than aerial shots taken from above duPont's plant site will or can reflect this information. And much of the secret process -- upon completion of construction -- will be so enclosed and hidden from view that aerial photography in all likelihood will not reflect the same quantity and quality of information as is reflected by the photographs taken by Mr. Christopher.

(12) I know of my own knowledge that more than 1000 persons were physically present at duPont's Beaumont Works (covering an area of approximately 540 acres) at the time the airplane carrying Mr. Christopher flew over the plant site.

(13) The properties and processes of duPont referred to herein could not be depicted by photographs taken from public highways, navigable waters, bridges or adjacent lands or buildings of any kind.

IN TESTIMONY WHEREOF, witness my hand, this the 4th day of June, 1969.

/s/ Frank Maderich
Frank Maderich

SWORN TO AND SUBSCRIBED before me by the said Frank Maderich on this the 4th day of June, 1969.

/s/ Sue Patterson
NOTARY PUBLIC in and for
Jefferson County, Texas

[S E A L]

..oo00oo..

* * * * *

(NOTE: MOTION OF DEFENDANTS FOR INTERLOCUTORY
APPEAL OMITTED BEING FILED IN THE
ORIGINAL FORM.)

* * * * *

..oo00oo..

ORDER OVERRULING DEFENDANTS' MOTION
TO DISMISS FOR LACK OF JURISDICTION; OVERRULING
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO
STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED;
OVERRULING DEFENDANTS' MOTION FOR SUMMARY JUDG-
MENT; SUSTAINING PLAINTIFF'S MOTION TO COMPEL
ANSWER; AND GRANTING DEFENDANTS' MOTION
FOR LEAVE TO FILE APPLICATION FOR APPEAL

(Number and Title Omitted)

(Filed: June 5, 1969)

BE IT REMEMBERED that on this date in the above case came on to be heard Defendants' Motion to Dismiss for lack of jurisdiction and Motion to Dismiss for failure to state a claim upon which relief can be granted; and Motion for Summary Judgment and Plaintiff's Motion to require answer to certain questions relating to the identity of the person, firm, or corporation who employed Defendants. Having considered all of said Motions, together with affidavits and depositions on file herein, it is ORDERED as follows:

1. Defendants' Motion to Dismiss for lack of jurisdiction is overruled;
2. Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted is overruled;
3. Defendants' Motion for Summary Judgment is overruled;
4. Plaintiff's Motion to compel answer to questions on depositions relating to the identity and location

of the firm, person or corporation who employed Defendants to take photographs of Plaintiff's Methanol Plant at its Beaumont works and to whom he delivered said photographs is sustained;

5. Having made such rulings, and having considered the motion for Interlocutory appeal filed by Defendants, it is also ORDERED that the above orders of this Court involve a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order will materially advance the ultimate disposition of the litigation here involved.

A prompt decision by the Appellate Court at this stage would serve the cause of justice by accelerating the ultimate termination of this litigation by settlement or otherwise.

Therefore, Defendants are GRANTED leave to file application for appeal to the Court of Appeals, and proceedings in this Court are stayed until termination thereof.

SIGNED AND ENTERED this the 5th day of June,
1969.

/s/ Joe J. Fisher
JUDGE PRESIDING

..oo00oo..

M E M O R A N D U M

(Number and Title Omitted) (Filed: June 5, 1969)

The Plaintiff charges Defendants, who are commercial photographers, with the unauthorized taking of aerial photographs of Plaintiff's Methanol Plant which photographs reveal "trade secrets" or secret processes carefully guarded from public disclosure. Further, Plaintiff alleges that the Defendants appropriated said "trade secrets" and secret processes by delivering the photographs to an unidentified third person, which conduct on the part of the Defendants caused irreparable harm and damage to the Plaintiff. Plaintiff also seeks to discover the identity and location of the person who employed Defendants to take the aerial photographs and to whom the photographs were delivered.

The Defendants contend that they had a legal right to take said aerial photographs of Plaintiff's property, including "trade secrets" or secret processes since said photographs were neither fraudulently or illegally taken. Further, the Defendants oppose disclosure of the identity and location of the person who employed them because to make such a disclosure would cause Defendants to violate a confidential relationship which would adversely affect the Defendants in their commercial photography business.

There appears to be a paucity of legal authority on this question, and the controversy is unique in being one of first impression. The trial Judge is presented with the difficult decision of two conflicting rights, to-wit; the right of the Plaintiff to protect its "trade secrets" and the right of the Defendants to take photographs from the air, land or water. The Court has attempted to protect Plaintiff by issuing an injunction prohibiting further disclosure of the information reflected by the photographs, and granting Plaintiff's motion to discover the identity of the undisclosed third party. The Court has attempted to protect the Defendants by permitting an interlocutory appeal and staying the proceedings, and the order of disclosure, pending disposition of the interlocutory appeal.

The attorneys representing the parties have been unusually cooperative and have stipulated that the photographs and negatives in question were delivered to an undisclosed third person in whose possession they remained for some one to three days. The original photographs and negatives in question have now been delivered to the Plaintiff. However, there is no stipulation concerning the use, if any, of the information obtained by the undisclosed third party from said photographs.

The question of law is whether the Defendants

have A RIGHT TO PHOTOGRAPH THE PLAINTIFF'S METHANOL PLANT FROM THE PUBLIC AIR SPACE AND TO OBTAIN PHOTOGRAPHS WHICH REVEAL "TRADE SECRETS" OR SECRET PROCESSES, AND TO APPROPRIATE SUCH KNOWLEDGE AND INFORMATION BY THE USE OF SAID PHOTOGRAPHS DELIVERED TO AN UNDISCLOSED THIRD PERSON.

The Court finds and concludes that the Plaintiff has alleged a cause of action over which the Court has jurisdiction, and is entitled to offer evidence of damages sustained as a result of Defendants' unauthorized conduct.

Further, the Court concludes that the Plaintiff is entitled to have the Defendants disclose the identify of the person or persons to whom the photographs and negatives in question were delivered, and the use, if any, of such knowledge and information obtained from the photographs.

SIGNED AND ENTERED this 5th day of June, 1969.

/s/ Joe J. Fisher
UNITED STATES DISTRICT JUDGE

..oo00oo..

* * * * *

(NOTE: REPLY TO PLAINTIFF'S ANSWER TO PETITION FOR INTERLOCUTORY APPEAL; AND ORDER GRANTING LEAVE TO APPEAL FROM THE INTERLOCUTORY ORDER OF THE UNITED STATES DISTRICT COURT OMITTED BEING FILED IN THE ORIGINAL FORM.)

* * * * *

..oo00oo..

COST BOND ON APPEAL

(Number and Title Omitted) (Filed: August 8, 1969)

We, Rolfe Christopher and Gary Christopher, Principals, and FIDELITY & DEPOSIT CO. OF MARYLAND, a surety corporation duly licensed under the laws of the State of Texas and authorized to do business in this state and district, as Surety, jointly and severally, promise to pay E. I. duPont deNemours & Company, Inc., for the benefit of whomever it may concern, a sum not exceeding \$250 in lawful money of the United States for the costs on appeal to the Court of Appeals for the Fifth Circuit from the interlocutory order action entered on June 5, 1969 (from which order leave to appeal was granted by the United States Court of Appeals, Fifth Circuit, on August 5, 1969), if the appeal is dismissed or the judgment affirmed, or, if the judgment is modified, for the costs that the appellate court may award, pursuant to Federal Rules of Civil Procedure- Rules 65.1 and 73.

Dated this 8th day of August, 1969.

/s/ Rolfe Christopher
Rolfe Christopher

/s/ Gary Christopher
Gary Christopher

Principals

FIDELITY & DEPOSIT CO. OF MARYLAND

BY /s/ Wayne W. Brown
Its ATTORNEY IN FACT

[S E A L]

Surety

APPROVED this 8th day of

August, 1969.

/s/ James R. Cooney
United States District Clerk

..oo00oo..

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

I, JAMES R. COONEY, Clerk of the United States District Court for the Eastern District of Texas, do hereby certify that the above and foregoing is the original record on Appeal in Civil Action No. 6258 in the Beaumont Division of said Court, entitled E. I. duPONT de NEMOURS & COMPANY, INC., Plaintiff, vs. ROLFE CHRISTOPHER and GARY CHRISTOPHER, Defendants.

WITNESS MY HAND officially and the seal of said Court at Beaumont, Texas, this the 22nd day of August, 1969.

JAMES R. COONEY, CLERK

By /s/ Mildred C. Verret
Mildred C. Verret
Deputy Clerk

[S E A L
O F
C O U R T]

..oo00oo..

* * * * *

(NOTE: APPLICATION FOR LEAVE TO TAKE INTER-
LOCUTORY APPEAL OMITTED BEING FILED
IN THE ORIGINAL FORM.)

* * * * *

..oo00oo..

A. B. LETTER SERVICE
327 Chartres Street
New Orleans, La. 70130